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A

DIGEST

OF THE

LAWS OF THE STATE OF ALABAMA:

CONTAINING

THE STATUTES AND RESOLUTIONS IN FORCE AT THE END OF
THE GENERAL ASSEMBLY IN JANUARY, 1823.

TO WHICH IS ADDED,

AN APPENDIX;

CONTAINING THE DECLARATION OF INDEPENDENCE; THE CONSTITUTION
OF THE UNITED STATES; THE ACT AUTHORIZING THE PEOPLE OF
ALABAMA TO FORM A CONSTITUTION AND STATE GOVERNMENT;
AND THE CONSTITUTION OF THE STATE OF ALABAMA.

COMPILED BY APPOINTMENT, AND UNDER THE AUTHORITY OF
THE GENERAL ASSEMBLY,

BY HARRY TOULMIN, ESQ.

WITH A COPIOUS INDEX.

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* This Proclamation must be in the Executive Records in the State of Mississippi. It was applied for by mail, but no copy has been received.
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A DIGEST

OF THE

LAWS

OF

THE STATE OF ALABAMA.

ERRATA.

Page 367, Section 2d, line 16 for office, read "officer."
405, Chapter XII. in date of the act, for 1822, read "1821."
437, In title of the act, for Lime, read "Line."
530, Chapter XI. in date of the act, for March, read "November."

ARBITRATION.—1819.

CHAPTER I.

EXTRACTS FROM THE CONSTITUTION OF THE STATE OF ALABAMA.

ARTICLE VI.

Sec. 18. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties, who may choose that summary mode of adjustment.

Legislature to pass laws providing for the determination of differences by arbitration.

Note.—There are provisions in the statute of 1799, "concerning defalcation," authorizing the parties in all cases where they have mutual accounts, to refer the adjustment thereof to referees; which will be found under the title 36, Judicial Poroceedings at Common Law.

CHAPTER II.

An Act providing for the determination of Suits and Controversies by Arbitration.—*Passed December* 13, 1819.

Mode of proceeding in order to terminate suit by arbitration.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general Assembly convened,* That it shall and may be lawful for all persons, desirous to end any controversy or suit by arbitration, to appoint any person or persons as arbitrators, and (if no suit is pending) the parties shall concisely state in writing the nature of the controversy,* to any court having jurisdiction thereof, or if in vacation, to any judge of said court; whereupon, the court or judge thereof, shall issue an order, certified by the clerk of the court, and directed to said arbitrators, stating the dispute to them referred. And in case any arbitrator or arbitrators, so appointed, shall fail or refuse to act, the parties shall have power to appoint one or more arbitrators, (as the case may be,) in writing, which shall be signed by such parties, deposited in the hands of the arbitrators, and by them returned to the proper officer, with the other papers: said arbitrators, or either of them, are empowered to issue subpœnas for witnesses, under the same regulations as are prescribed by law in cases of suits, to which all

Arbitrators may issue subpœnas.

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* See the next chapter, Sec. 2.

sheriffs and constables are directed to give obedience, and all persons summoned as witnesses, by virtue of said subpœnas, shall be allowed the same compensation, while travelling to, and attending on said arbitration, and be equally privileged from arrest, or on failure to attend, at the times and places in said subpœnas expressed, shall be subject to the same fines and penalties, as witnesses are in similar cases in the circuit courts.

Arbitrators to take oath.

Sec. 2. *And be it further enacted*, That the arbitrators so chosen, before they enter on the investigation of any matters to them submitted, shall take an oath or affirmation, impartially to determine the controversy to them submitted, agreeably to evidence and the equity of the case, to the best of their judgment, without favour or affection; which oath shall be administered to them by any judge or justice of the peace within this state. The said arbitrators shall make up their award in writing, under their hands and seals, noting therein the time at which it was made; one fair copy of which, signed as aforesaid, shall immediately upon its being made, be delivered to each of the contending parties; and the original shall be delivered to the court in which the commission was made, at the court next succeeding the date of said award. The award, so made, shall be entered of record, and made the judgment or decree of said court, and shall not be invalidated, set aside, or appealed from, unless it shall be made to appear to said court, that such award was obtained by corruption, evident partiality, or other undue means, in which case either party may appeal therefrom, to any court having cognizance thereof, under the rules and regulations prescribed by law for the granting appeals from said courts.

To make award in writing.

Award to be entered of record.

Award not to be set aside for informality only.

Sec. 3. *And be it further enacted*, That no award, made by virtue of this act, shall be liable to be examined into, superseded, or reversed by writ of error, or set aside by the court to which it was returned, for want of form only, nor for other irregularity, if such award decides the case, suit, matter, or controversy submitted to arbitration.

When amount does not exceed fifty dollars.

Sec. 4. *And be it further enacted*, That in cases of suit or controversy, where the amount shall not exceed fifty dollars, the parties may obtain an order from a justice of the peace, directed to such arbitrators as may be appointed, stating the dispute to them referred, who shall take the oath, proceed in the same manner, and exercise the same powers herein before provided; and judgment shall be entered upon the award of the said arbitrators, when rendered to the justice by whom the order was made, which shall not be set aside, invalidated, or appealed from, except in the manner and for the causes prescribed in this act.

Compensation of arbitrators.

Sec. 5. *And be it further enacted*, That the arbitrators for their services, shall receive two dollars per day, if demanded, to be paid jointly by the contending parties, before the delivery of the copies of the award; and the justices and clerks shall be allowed, for all the services performed by them under this act, the same fees as are allowed by law for the like services in cases of a similar nature.

Fees of justices and clerks, how paid.

SEC. 6. *And be it further enacted*, That the fees to the justices and clerks, prior to the return and entry of the award, shall be jointly paid down by the contending parties, as those services are rendered; but after the award is entered of record, all subsequent costs shall be charged to, and collectible from that party against whom the judgment or award shall be, under such award, except the award shall otherwise direct.

CHAPTER III.

An Act to amend an Act, entitled an Act providing for the determination of Suits and Controversies by Arbitration, passed at Huntsville, Dec. 13, 1819. —*Passed December* 11, 1820.

Part of the former act repealed.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That so much of an act passed at Huntsville, December 13, 1819, entitled an Act providing for the determination of Suits and Controversies by Arbitration, as requires the parties to make a concise statement in writing to a judge, be and the same is hereby repealed.

Statement to be made to clerk.

SEC. 2. *And be it further enacted*, That hereafter it shall be lawful to make such statement in vacation of the court, to the clerk where such suit is pending, who shall issue the order heretofore required to be issued by the judges.

ATTACHMENTS.—1807.

NOTE.—The first act of the government of the Mississippi Territory relating to attachments, was an act passed in April, 1799, entitled, "A law allowing for domestic attachments," the foundation of which was an act of Pennsylvania, passed in the year 1705. During the same session, the governor and judges adopted a law of the State of New-Jersey, "Allowing foreign attachments."

These laws, though somewhat modified and enlarged, furnish the groundwork of another law passed by the governor and judges in 1800. And also of the following act in the digest, published under the authority of the general assembly in the year eighteen hundred and seven.

CHAPTER I.

An Act directing the method of proceeding in Courts of Common Law and Equity, against absconding Debtors, and other absent Defendants.—*Passed in* 1807.

SEC. 1. *Be it enacted by the Legislative Council, and House of Representatives of the Mississippi Territory, in general assembly convened, and it is hereby enacted by the authority of the same*, That when any writ shall issue from any of the

Proceedings where the sheriff returns that the defendant is not found.

courts of this territory, whereby any sheriff or other officer shall be commanded to take the body of any person to answer to any civil action in any of the said courts; and the sheriff shall return, that the defendant is not to be found within his county, the plaintiff may at his election sue out an attachment against the personal estate of such defendant, or an *alias*, or *pluries capias*, returnable in the same manner as original process. And if the sheriff shall return any goods by him attached, and the defendant shall fail to appear and plead within the time herein directed, the plaintiff shall be entitled, if in an action of debt, to final judgment, and if an action on the case, to an interlocutory judgment; and may execute a writ of inquiry the next succeeding term. And the goods so attached, if not replevied or sold, according to the rules herein after prescribed for goods taken on original attachments, shall remain in the custody of the sheriff until final judgment: and then be disposed of in the same manner as goods taken by execution on a writ of *fieri facias*. And if the judgment shall not be satisfied by the goods attached, the plaintiff may have execution for the residue.

Proceedings against absconding debtors.

SEC. 2. *And be it further enacted*, That if any complaint be made upon oath, to any of the territorial judges, or to any justice of the county courts, by any person or persons, his, her, or their attorney, agent, or factor, that any person hath removed, or is removing him, or herself, out of the county privately; or so absconds or conceals him or herself, that the ordinary process of law cannot be served on such debtor. And if such plaintiff, his or her attorney, agent, or factor, shall swear to the amount of his or her debt or demand, to the best of his or her knowledge and belief, after deducting all off-sets and discounts, due to the defendant, and shall produce a regular statement of his account current or demand, and swear to the same: it shall be lawful for such judge or justice, and he is hereby empowered and required to grant an attachment against the estate of such debtor, wherever the same may be found, in the hands of any person or persons, indebted to, or having any of the effects of the defendant, or so much thereof as shall be of value sufficient to satisfy the debt or demand, and costs of such complaint: which attachment shall be returned to the court where the suit is cognizable, and shall be deemed the leading process in such action. And the same proceedings shall be had thereon, as on judicial attachments.

Who is defendant, and who garnishee.

SEC. 3. *And be it further enacted*, That the person or persons whose goods or effects are so attached, shall be called the defendant in the attachment; and the person in whose hands or possession the same goods or effects are so attached, shall be called the garnishee, and shall be obliged to appear in court at the return of the attachment, and answer what shall be objected against him, and abide the judgment of court; and shall be allowed out of the effects attached, reasonable satisfaction for his attendance.

SEC. 4. *And be it further enacted,* That the manner of executing writs shall be by the officers going to the house, or to the person in whose hands or possession the defendant's goods or effects are supposed to be; and then and there declare, in the presence of one or more credible persons of the neighbourhood, that he attacheth the same goods or other effects. From and after which declaration, the goods, money, or effects so attached shall remain in the officer's power, and be by him secured, in order to answer and abide the judgment of court in that case, unless the garnishee will give security for the same.

Mode of executing writ of attachment.

SEC. 5. *And be it further enacted,* That every judge or justice, before granting any original attachment, shall take bond and security from the party for whom the same shall be issued; his or her attorney, agent or factor, payable to the defendant, in double the sum for which the complaint shall be made, conditioned for satisfying all costs which shall be awarded to such defendant, in case the plaintiff shall be cast in suit: and also all damages, which shall be recovered against the plaintiff in any such suit or suits, which may be brought against him for wrongfully suing out such attachment; which bond, together with the affidavit of the party complaining, subscribed with his proper name, shall be returned by the justice, taking the same to the court, to which the attachment is returnable. Every attachment issued without bond and affidavit, taken and returned as aforesaid, shall be abated on the plea of the defendant.

Bond to be taken from the plaintiff.

Condition of Bond.

Attachments issued without bond and affidavit may be quashed on the plea of defendant.

SEC. 6. And for the ease and convenience of creditors and others, who may be injured as aforesaid, *Be it enacted,* That it shall and may be lawful for any justice of the county courts, upon complaint made to him by any person, or persons, as aforesaid, to issue attachments under the rules and regulations before mentioned, and make the same returnable to any of the said courts, where the same is cognizable.

County court justices may grant attachments.

SEC. 7. *And be it further enacted,* That when any person, who shall be an inhabitant of any other government, so that he cannot personally be served with process, shall be indebted to any person, a resident of this territory, and hath any estate within the same, any of the said judges or justices may grant an attachment against the estate of such foreign person, under the rules, restrictions, and regulations before mentioned; and the same proceedings may be had thereon.

Proceedings in the case of debtors not residing in the territory.

And if such inhabitant of any other government have no goods nor chattels within this territory, but have lands within it; the sheriff shall execute such attachment upon his lands and tenements, agreeably to the provisions of the act concerning executions.

And in case of the death of any debtor, residing out of the limits of this territory, having lands or other property therein, the creditor resident within the territory, shall in like manner, be entitled to recover by attachment, against the executors and administrators: and execution shall issue accordingly against the property so left within the government.

Proceedings against joint debtors.

SEC. 8. *And be it further enacted*, That when two or more persons, not residing in this territory, are jointly indebted; either as joint obligors, partners, or otherwise; then the writ or writs of attachment shall and may be issued against the separate and joint estate of such joint debtors, or any of them; either by their proper names, or by, or in the name and style of the partnership; or by whatever other name or names such joint debtors shall be generally reputed, known or distinguished within this territory; or against the heirs, executors or administrators of them, or either or any of them. And the lands, tenements, goods, chattels and effects, rights and credits of such debtors, or either or any of them, shall be liable to be seized and taken, for the satisfaction of any just debt or other demand; and may be sold to satisfy the same.

Proceedings against non-residents, estates, may be stayed.

SEC. 9. *And be it further enacted*, That in all suits commenced or prosecuted by attachment, against the estate of persons residing out of this territory, the court to which the same shall be brought, shall stay all proceedings in such suit for so long a time as they may think necessary; not less than six months, nor exceeding one year from the time of the return of such process. And when it can be conveniently done, notice shall issue from the court to the defendant, by post or other conveyance, to be inserted in the public papers, of one or more of the States. And if the defendant appear, put in bail, and plead within the time limited for his or her appearance in such case, his estate so attached, shall be liberated; and the garnishee or garnishees, if any, discharged. And it shall be lawful for the jury, in case of such nonresidents, who shall be notified as aforesaid, to give in damages, legal interest upon the plaintiff's recovery, during the time of such extraordinary continuances.

Form of attachment.

SEC. 10. And to prevent errors in issuing attachments, and taking bonds thereupon, *Be it enacted*, That the attachment shall be in the following form, viz.;

Mississippi Territory,

To the sheriff of County, Greeting:

Whereas A. B. (or A. B. attorney, agent or factor as the case may be, of C. D.) hath complained on oath to Esq. judge of the court of (or justice of the county court of,) that E. F. is justly indebted to him (or to the said A. B.) to the amount of , and oath having been also made, that the said E. F. hath removed, or is about to remove himself out of your county; or so absconds or conceals himself, that the ordinary process of law cannot be served upon him, (or is an inhabitant of another government, if the case is so)* and the said having given bond and security, according to the directions of the act in such cases made and provided. We therefore command you, that you attach the estate of the said E. F. if to be found in your county, or so much thereof (repleviable on security) as shall be of value sufficient to satisfy the said debt and costs, according to the complaint: and such estate so attached, in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, to be had at the court, to be held for at upon the day of next; so as to compel the said E. F. to appear and answer the above complaint of the said ; when and where you shall make known to the said court how you have executed this writ. Witness esquire, judge or justice of the said court, at , the day of , in the year of our Lord , and of American Independence the ."

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* It has been decided, that in the case of a person removing, or being about to remove; the justice must make use of the words "hath removed or is about to remove," &c. and say nothing about "absconding;" but if the ground of the attachment be his "absconding or concealing himself," or if it be his being an "inhabitant of another government;" the fact in either case must be stated accordingly. If the oath be in the *alternative* it will vitiate the attachment.

Which attachment shall be signed and sealed by the judge or justice, granting the same. And the bond to be given on obtaining such attachment, shall be in the following form, viz.:

Form of the bond.

"Know all men by these presents, that we and , all of the county of (as the case may be) are held and firmly bound unto in the sum of , to be paid to said , his certain attorney, executors, administrators, or assigns. For which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, or administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated the day of in the year of our Lord

The condition of the obligation is such, that whereas the above bounden hath the day of the date hereof, prayed an attachment at the suit of , against the estate of the above named , for the sum of ; and hath obtained the same; returnable to the court of , to be held at , on the day of next. Now if the said shall prosecute his suit with effect, or in case he fail therein, shall well and truly pay and satisfy to the said all such costs and damages as shall be awarded and recovered against the said , his heirs, executors or administrators, in any suit or suits which may be hereafter brought, for wrongfully suing out the said attachment: then the above obligation to be void: otherwise to remain in full force and effect."

Proviso.

Provided nevertheless, That no attachment shall be abated for want of form, if the essential matters expressed in the foregoing precedent be set forth in such attachment.

Property liable to immediate waste may be sold.

SEC. 11. *And be it further enacted*, That when any estate attached, shall by three justices of the county court, to be summoned by the sheriff for that purpose, be certified on oath to be in danger of immediate waste and decay, and if the person or persons to whom it belongs, his, her, or their attorney, agent or factor, shall not within twenty days after serving such attachment, replevy the same; then such estate shall be sold at public vendue, by the sheriff or other officer; he having first advertised such sale at the court-house, and other public places in his county, at least ten days before the sale. And the money arising by such sale, shall be liable to the judgment obtained upon such attachment, and deposited in the hands of the clerk of the court, to which the process shall be returnable, there to await the event of such judgment.

Garnishees to be summoned and examined.

SEC. 12. *And be it further enacted*, That when the sheriff or other officer shall serve an attachment in the hands of any person or persons, supposed to be indebted to, or supposed to have any of the effects of the party absconding or residing out of this government; he shall at the same time, summon such person or persons, as a garnishee or garnishees in writing; to appear at the court to which the attachment shall be returnable, within the first four days of the first term thereof, there to answer upon oath, what he or she is indebted to the defendant; and what effects of the defendant he or she hath in his or her hands; and had at the time of serving such attachments; what effects or debts of the defendant there are in the hands of any other, and what person, to his or her knowledge or belief.

Judgment against garnishees.

And where any attachment shall be served in the hands of any garnishee in manner aforesaid, it shall be lawful, upon his or her appearance, and examination, to enter up judgment, and award execution against any such garnishee, for all sums of money due to the defendant, from him or her; and for all effects and estate of any kind, belonging to the defendant, in his or her possession or custody, for the use of the plaintiff; or so much thereof as shall be sufficient to satisfy the debt and costs, and all charges incident in levying the same—and all goods and effects whatsoever, in the hands of any garnishee or garnishees, belonging to any defendant, shall be liable to satisfy the plaintiff's judgment, and shall be delivered to the sheriff or other officer, serving the attachment.

Proceedings for contempt in a garnishee.

SEC. 13. *And be it further enacted*, That where any garnishee shall be returned by the sheriff or other officer, summoned in manner aforesaid, and shall fail to appear and discover on oath as by this act is directed, it shall be lawful for the court, after solemnly calling the garnishee, and such court is hereby authorized and required, to enter a conditional judgment against such garnishee, and upon such so entered, a *scire facias* shall issue against such garnishee, returnable the next term, to show cause, if any he hath, why final judgment should not be entered against him. And upon such *scire facias* being duly executed and returned, if such garnishee shall fail to appear at the next term, and discover on oath in manner aforesaid, the court shall confirm such judgment, and award execution for the plaintiff's whole judgment and costs; and if upon the examination of any garnishee, it shall appear to the court, that there is any of the defendant's estate in the hands of any person or persons, who have not been summoned, such court shall, upon motion of the plaintiff, grant a judicial attachment, to be levied in the hands of such person or persons, having any of the estate of the defendant in his, her, or their custody or possession, who shall appear and answer, and be liable as other garnishees.

Estate repleviable.

SEC. 14. *And be it further enacted*, That it shall be lawful for any person against whose estate any attachment hath issued as aforesaid, his or her attorney, agent or factor, at any time before final judgment entered, or writ of inquiry executed, upon giving special bail to replevy the estate so attached and plead to issue, so that the plaintiff is not thereby delayed of his trial: *Provided always*, that no judicial process shall be issued against the estate of any person residing out of the limits of this territory, unless such process is grounded on an original attachment; or unless the leading process in the suit has been executed on the person of the defendant when within the territory.

Process against the estate of non-residents restricted.

Bond by the plaintiff after judgment and before sale on execution.

SEC. 15. *And be it further enacted*, That after judgment obtained by the plaintiff upon any attachment against non-residents, the plaintiff shall, before sales, and after execution is awarded, find security; who shall undertake for the plaintiff—That if the defendant in the attachment shall, within a year and a day next following, by himself or attorney, come into court, and disprove or avoid the debt recovered by the plaintiff against him, or shall discharge the same with costs, that then the plaintiff shall restore to the defendant, the goods or effects, or value thereof, by the plaintiff attached and condemned; or so much thereof as shall be disproved or discharged; or else they shall, and will do it for him.

NOTE.—The subsequent sections of this act will be found under the title of "Judicial Proceedings in Chancery."—Chap. 2.

CHAPTER II.

Extract from an Act regulating Judicial Proceedings.—*Passed Dec.* 18, 1811.

Justices of the peace may issue attachments.

SEC. 7. *And be it further enacted*, That it may be lawful for any justice of the peace upon complaint to him made by any person or persons, to issue attachments, under the rules and regulations prescribed and required by law; and make the same returnable to any court, where the same is cognizable.

CHAPTER III.

Extract from an "Act to prevent Frauds in certain cases, and for other purposes.—*Passed Dec.* 24, 1812.

Where the garnishee denies being indebted, the court to order an issue.

SEC. 2. *And be it further enacted*, That when any garnishee shall be summoned into court, and on his or her garnishment, deny that he or she owes to, or has any of the defendant's property in his or her hands, and the plaintiff in such attachment shall on oath, state his belief that such garnishee does owe to, or has property in his hands belonging to the defendant, the court shall order an issue to be made up, which shall be tried by a jury, and the court shall give judgment on their verdict as in other cases.

CHAPTER IV.

An Act to amend the Attachment Law.—*Passed January* 15, 1814.

Attachments may issue, though debt not due; proceedings in such case.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That a writ of attachment may in all cases issue against the property of an absconding debtor, whether the sum sworn to, be due or not; but no judgment shall be entered against the defendant in attachment, or execution issue to sell the property attached, until the debt is actually due, unless the property so attached, shall thereby appear to be of a wasting or perishable nature; then it shall be sold, giving the plaintiff his election, to make a deduction of six per cent. on the amount of his debt until due, or suffer the property attached to be sold by the sheriff, giving a credit until such time as the plaintiff's debt or demand shall become due, taking a bond payable to the plaintiff, with sufficient security for the amount of the sale, which bond shall be returned to the clerk's office, on which execution may issue, as on a judgment of any court in the territory.

Summons for garnishees may run to any county.

SEC. 2. *And be it further enacted*, That the respective courts may summon and compel the attendance of any garnishee, from one county to another, who shall in all respects, be proceeded against in the same manner as garnishees residing in the county where the attachment is returnable.

CHAPTER V.

An Act to Revise, Consolidate, and Amend the several Acts relative to Justices of the Peace and Constables.—*Passed December* 27, 1814.

NOTE.—The four first sections of this act, with the thirteenth and all that follow, except the seventeenth, will be found under title 39, "Justices of the Peace." The ninth, tenth, eleventh, twelfth, and seventeenth, under title 24, "Executions."

In cases of attachment, affidavit.

SEC. 5. *And be it further enacted*, That when the process shall be required to be in the nature of an attachment, the justice before issuing the same, shall take the affidavit of the plaintiff, his or her agent or attorney, of the amount of the debt or demand due from the defendant, and that he or she absconds or secretes him or herself—that he or she actually resides out of this territory, or that he or she is about to remove, him or herself or effects from this territory, so that the ordinary process of law cannot be served upon him or her,* and that the attachment is not sued out for the purpose of vexing or harassing the defendant, or other improper motive; and also give bond and

Bond.

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* The oath must state one of the facts explicitly, and not be in the alternative. See the note in chapter I.

sufficient security, in double the amount of the demand sworn to, conditioned, "that the plaintiff shall prosecute his or her attachment to effect, and pay the defendant all such damages as he or she may sustain by the wrongful or vexatious suing out such attachment." And such attachment may be levied on the defendant's goods and chattels, which shall remain in the hands and possession of the officer levying the same, unless the defendant, his or her agent or attorney, or some other person replevy the same, by giving bond and security in double the amount of the plaintiff's demand, conditioned, that if the defendant be condemned in the action, he shall pay the condemnation money, or render himself a prisoner; and in case he fail so to do, the securities will do it for him.*

On what the attachment may be levied.

Defendant may replevy.

Proceedings on foreign attachment to be stayed six months, or until notice given the defendant.

SEC. 6. *And be it further enacted*, That when any process in the nature of an attachment shall issue, and the defendant resides without the limits of this territory, and has no agent or attorney within the same; no judgment shall be rendered on such attachment, until six months after the issuing of such attachment, or until the defendant be notified by conveying a notice to him or her by mail, where his or her residence is known, or by advertising the same in the manner the justice issuing the attachment may direct, where the defendant's place of residence is unknown: nor shall the property so levied on be sold, unless the plaintiff, his or her agent or attorney, or some credible person, will make oath that the goods and chattels are likely to waste or be destroyed by keeping. And in that case the justice shall, by order in writing, direct such property to be sold, giving at least fifteen days notice of the time and place of such sale by advertisement, set up at three of the most public places in the county; and the money arising from such sale, shall remain in the hands of the justice, subject to his final judgment on the attachment.

Perishable property may be sold.

Fifteen days notice.

Money to remain in justice's hands.

Attachment may issue, although debt not due, and be a lien on property, but no judgment till it is due.

SEC. 7. *And be it further enacted*, That on application to any justice of the quorum or of the peace, if the plaintiff comply with the requisitions prescribed in the fifth section of this act, said justice may issue an attachment, although the debt or demand of the plaintiff may not be due, which attachment shall be a lien on the property attached, until such debt or demand becomes due, when judgment shall be rendered and execution issued; but if the property so attached be clearly of a wasting or perishable nature, then the same shall be sold, giving a credit on the sum until the debt or demand of the plaintiff becomes due, on the purchaser's giving bond and security for the payment of the purchase money, which bond shall be lodged with the justice, who shall issue execution thereon against the principal and security, or either of them, if the money is not paid at the expiration of the time given.

Perishable property to be sold on credit till debt is due.

Bond to be in nature of judgment, and execution issue thereon.

Garnishees may be summoned.

SEC. 8. *And be it further enacted*, That when an attachment is levied upon any property in the hands of any person not a party to the suit, is suspected to have goods and chattels or ef-

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* See chapter VI. of this title.

Examination.

Judgment against them.

Judgment by default may be set aside if he appear in ten days.

If not, second summons to issue and judgment thereon.

May be discharged by giving up the property of defendant in his hands

in 20 days after final judgment.

Duty of constable to demand property of garnishee, where right of property in garnishees' hands or other property is doubtful.

fects of the defendant in attachment, in his or her hands or possession, or be indebted to him or her, the justice issuing the attachment shall, on such suggestion, summon such person as garnishee: and if such garnishee appear, he or she shall be examined on oath, touching such goods and chattels of the defendant, as he or she may have had in his or her hands and possession at the time of the service of the summons aforesaid, or then has in his or her hands and possession, and such sum or sums of money or quantity of merchandise, goods, and chattels as he or she may owe and be indebted to the defendant, and what goods and chattels of the defendant, he or she may know to be in the hands and possession of any other person, or sum or sums of money or quantity of merchandise, goods, and chattels, he or she may know to be due from any other person to the defendant; and if such garnishee answer, that he or she has goods and chattels, wares and merchandise of the defendant in his or her possession, or acknowledge him or herself indebted to the defendant, the justice shall enter judgment against such garnishee for the value of the goods and chattels of the defendant, in his or her hands and possession at the time of the service of the summons aforesaid, or that he or she then has, or such sum or sums of money as he or she may have owed at the time of service of said summons, or then owes; but if the garnishee fail to appear and obey the summons of said justice, on return thereof served, the justice shall enter judgment by default against such garnishee; and if he or she appear and answer within ten days thereafter, said judgment shall be set aside, and such judgment be entered as the justice of the case may require,—but if such garnishee fail to appear within ten days after judgment by default against him or her, the justice shall issue his second summons, commanding said garnishee to appear at a time certain, and if said garnishee fail to appear at said time, final judgment shall be entered against him or her, for the amount of the plaintiff's demand, and costs of suit; and execution shall issue thereon: *Provided*, that in all cases when any garnishee may have in his hands or possession any property belonging to the defendant, or be indebted to the defendant, any and specific property, he shall be at liberty at any time, within twenty days after final judgment entered against him as garnishee, to deliver the same to the justice of the peace or officer serving the attachment, in discharge of himself; and the same shall be sold to satisfy such judgment as may be obtained against the defendant in attachment, and in all cases it shall be the duty of the justice of the peace, by the proper officer, to call for the property deposed to be due from, or in the hands and possession of any garnishee, at the usual place of residence of such garnishee, within a reasonable time after the final judgment rendered.

Justices to issue *venire facias* to constable to summon seven men.

Sec. 9.[*] *And be it further enacted*, That if any person be garnisheed in attachment, and doubts be raised as to the right of

[*] This section is inserted under the title 24, "Executions," but is also introduced here, to complete the subject of "attachments."

property attached, then in the hands of the garnishee, or be claimed by him or her, or as to the right of any property attached, or as to the right of any property levied on by execution from a justice of the quorum, or of the peace, it shall be the duty of such justice to stay all proceedings, and issue a *venire facias* to the constable, requiring him to summon a jury of seven men to appear before him at a certain time and place therein mentioned, not less than five, nor exceeding ten days, to try the right of property so attached, or taken in execution;—and the justice shall administer an oath to the jury so summoned, well and truly to try the right of property between the claimants, and a true verdict give according to the evidence that may be produced on trial: *Provided*, That any person conceiving himself aggrieved by any such verdict, may appeal therefrom to the next superior court, and the right of property may be tried at the first term of said court by a jury, on an issue to be made up between the claimants at or before the trial, and until such trial can be had, the attachment or execution shall continue to be a lien upon such property so far as the defendant's right to the same extends; and the justice shall send up all the papers in such case to said court.

To try the same.

Jury to be sworn.

Appeal therefrom to superior court.

In meantime the attachment or execution to be a lien on property.

Note.—The subsequent parts of this act will be found under title 24, "Exections;" also title 39, "Justices of the Peace."

Sec. 15 of chapter seven, the last-mentioned title, to issue attachment for any sum above their jurisdiction, returnable to the superior court.

For proceeding against garnishees where an execution has been returned "no property found," see title 24, "Executions," chapter 11.

Where the plaintiff who has received judgment, can make oath that the defendant has no property, the debtors of the defendant may be summoned as garnishees. See "Executions," chap. 12, sec. 2.

CHAPTER VI.

Extracts from an Act passed February 7, 1818, entitled an Act for the better regulation of Judicial Proceedings.

Sec. 10. *And be it further enacted*, That whenever the property of an absconding debtor shall be attached; it shall not be replevied, unless the security in the replevy bond shall undertake to return the specific property attached, or pay and satisfy such judgment as may be rendered against the defendant.

Note.—Other provisions with regard to the trial of the right of property taken in execution, will be found under title 24, "Executions," chapters, 7, 14, and 19.

Proceedings against garnishees in the case of insolvent debtors, will be found under the same title, chap. 1, sec. 25.

The debtors of the defendant may be summoned as garnishees in certain cases. See "Executions," chap. 12, sec. 3.

ATTORNEYS AND SOLICITORS.—1807.

CHAPTER I.

An Act concerning Counsel and Attorneys at Law.—*Passed first in* **1802,** *and revised and constituted in* **1807.**

Attorneys to be licensed, and take an oath.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory in general assembly convened,* That no person shall hereafter be permitted to practise as counsel or attorney at law, in any of the courts of this territory, without previously producing to the court a license from the governor* of this territory, for the time being: and in the presence of such court, shall take an oath to support the constitution of the United States; and also the following oath of office:—"I, A. B. do solemnly swear, (or affirm,) that I will honestly demean myself in the practice as counsel or attorney: and will, in all respects, execute my office according to the best of my knowledge and abilities." And if any person shall presume to practise as counsel or attorney, without being licensed and qualified as aforesaid, he shall forfeit the sum of two hundred dollars for every cause he shall prosecute or defend, in any court in this territory; one half to the use of the informer, the other half to the use of the territory; to be recovered by action of debt in any court of record: *Provided,* That nothing herein contained shall be so construed as to prevent or deprive any citizen from the privilege of personally prosecuting or defending any suit in which he may be a party.

Form of the oath.

Parties may personally prosecute or defend.

Convicted felons not admitted to practice.

SEC. 2. *And be it further enacted,* That every person that hath already been, or shall hereafter be convicted of any felonious crime, shall be incapable of obtaining such license; or if licensed, the judges of any court in which such person may practise, on proof thereof being made to them, may supersede his license.

Judges may suspend or vacate license, &c.

SEC. 3. *And be it further enacted,* That if the judges of the superior courts, from their own observation, detect any malpractice in the said courts, in any counsel or attorney of those courts; or if complaint in writing be made to them of such malpractice in the said courts, or in the county courts of any county, the party accused shall be summoned to show cause why an information should not be filed against him: and if such information should be ordered, and the counsel or attorney so offending should be found guilty of the matter therein charged, the said judges of the superior courts may either suspend his license during a certain time, or vacate it altogether, as they shall judge most proper; first ordering a jury to be impanneled for the trial of such information. And the judges of the superior, and justices of the county courts, shall have power to fine any attorney for misbehaviour or contempt offered to them, and

Jury to be impanneled.

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* The license now comes from the court. See chapters 4 and 6.

may cause any attorney practising in said courts, to find security for his good behaviour.

Attorneys liable for neglect.

SEC. 4. *And be it further enacted*, That if any suit shall be dismissed for the nonattendance or neglect of any attorney, practising either in the superior or county courts, not having a just and reasonable excuse, it shall be at his cost. And he shall moreover be liable for all damages his client may sustain, by such dismission, or any other neglect of his duty; to be recovered in any court of record.

Proceedings against attorney who neglects to pay over money received,

SEC. 5. *And be it further enacted*, That every attorney receiving money for his client, and refusing to pay the same when demanded, shall be proceeded against in a summary way, on notice before any court of record, in the same manner as sheriffs are, or may be liable to be proceeded against for money received on executions.

or failing to enter an appearance.

SEC. 6. *And be it further enacted*, That in all cases where the sheriff is, or may be authorized by law, to take the engagement of an attorney endorsed upon the writ, that he, such attorney, will appear for the defendant or defendants, every attorney thus entering into such engagement, who shall fail to enter an appearance agreeably thereto, shall forfeit to the defendant or defendants twenty-five dollars, for which judgment shall be immediately entered, and execution issue thereon.

Only two can argue on one side.

SEC. 7. *And be it further enacted*. That the judges of the superior courts, and the justices of the county courts, shall not suffer more than two attorneys to argue on any side, in any suit.

Penalty for acting under power of attorney made before action brought.

SEC. 8. *And be it further enacted*, That if any attorney, or other person practising as an attorney, shall presume to appear under any power of attorney, made before action brought, for confessing or suffering judgment to pass by default or otherwise, for any defendant in any court of record within this territory, he shall for every such offence, forfeit and pay two thousand dollars to such defendant, for his or her own use; to be recovered with costs by action of debt or information, in any court of record; and moreover shall be liable to an action for damages, at the suit of the party aggrieved.

Officers not to appear as attorneys.

SEC. 9. *And be it further enacted*, That no justice of the peace, sheriff, or under sheriff, or clerk of any county court, shall appear or plead as attorney for any person or persons whatsoever, in the court of the county whereof he is a member, officer, or clerk; except only as general attorney for any person or persons not residing or being within this territory, under penalty of being fined by such court, in the sum of fifty dollars for every such offence, to the use of the same county, towards lessening the levy thereof.

[SEC. 10. This section inflicted a penalty on any lawyer who should demand or take greater fees than are allowed by law, before the suits he might be employed in should be finally determined. It was repealed in 1812.]

SEC. 11. *And be it further enacted*, That nothing in this act shall be so construed as to prevent or deprive any citizen from the privilege of personally prosecuting or defending any suit in which he may be a party.

CHAPTER II.

An Act concerning Attorneys General.—*Passed February*, 1807.

[SEC. 1. Provided for the appointment of an attorney general for the western counties.]

His duties. SEC. 2. *And be it further enacted*, That it shall be the duty of the said attorney general, and he is hereby directed to attend the circuit courts, to be held for the counties of Adams, Jefferson, Wilkinson, and Claiborne: in which said courts, it shall be his duty to appear for the territory in all criminal prosecutions, and in all civil cases in which the territory or counties aforesaid shall be interested: *Provided however*, if the attorney general fails to attend at any or either of the said courts, the judges are hereby authorized, from time to time, as they may think fit, to employ some attorney to prosecute and act for the territory or county, (as the case may be,) in his stead: which attorney so employed, shall for his services be paid by the attorney general, such sum as shall be adjudged sufficient by the court before whom the service may be rendered.

[SEC. 3. Provided for the appointment of an attorney general for Washington District.]

Further duties of attorney general. SEC. 4. *And be it further enacted*, That all accounts of a public nature, before they are allowed by any or either of the courts aforesaid, shall be presented to the attorney general of the district in which the same shall have arisen, and his opinion thereon obtained in writing: he shall at the request of the territorial treasurer, and of the county treasurer, for the said counties, give his opinion in writing upon all cases concerning the public interest, and shall at the desire of the said treasurers, institute and prosecute to effect before the proper courts, suits against all persons indebted to the territory or to the said counties.

[SEC. 5. Related to their salaries, which was afterward altered.]

Fees on judgments. SEC. 6. That on all indictments for felonies, whereon a conviction shall be had, the fee of the attorney general shall be ten dollars; and of all inferior prosecutions, upon which judgment shall be given against the defendant, the sum of five dollars; to be collected as other fees, and paid by the proper officer receiving the same, into the territorial treasury, as a part of the public revenue.*

NOTE.—In 1809, an attorney general was appointed for Madison County, and on the establishment of the territory of Alabama, an act was passed in February, 1818, laying off the territory into three districts, and for the appointment of an attorney general in each, who was to perform all the duties by law appertaining to that office in the counties comprehended in his district, and to receive four hundred and fifty dollars per annum in full compensation for his services.

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* See the fees as now established, in the next chapter, sec. 2.

CHAPTER III.

An Act prescribing the duties of certain Public Officers.—*Passed December 17, 1819.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall be the duty of the attorney general to keep his office at the place designated for the seat of the state government, and to conduct and prosecute in the supreme court, all suits in which the state may be concerned, and to give his opinion and advice in writing, or otherwise, on any question of law when required by the governor, or when requested by the comptroller of public accounts, or the state treasurer, concerning matters which relate to their respective offices; and he shall also perform the duties of solicitor in the judicial circuit, embracing the place designated for the seat of the state government, and shall receive in addition to the salary established by law, the fees for prosecutions in such circuit, and in the supreme court, which are allowed to solicitors for the like services.

Duties of attorney general.

Emoluments.

SEC. 2. *And be it further enacted,* That there shall be elected a solicitor for each judicial circuit in this state, (except the judicial circuit assigned to the attorney general,) whose duty it shall be to prosecute in such circuit, all offenders against the state, and all civil actions in which the state may be concerned, (except before the supreme court,) and who shall be entitled to receive, in addition to the salary established by law,* the following fees: on every conviction for any felony, (except murder,) ten dollars; on every conviction for petit larceny, ten dollars; on every conviction for unlawful gaming, or for unlawfully permitting the same, or for unlawfully keeping a billiard-table, twenty dollars; on every conviction for perjury, twenty dollars; on every conviction for forgery, counterfeiting coin or any bank note, or for feloniously uttering or offering any counterfeit coin, bank note, writing obligatory, or other instrument of writing, or forwarding or assisting in any of said offences, twenty dollars; on every conviction for maim, or for an assault, with intent to commit murder, rape, or robbery, fifty dollars; on every conviction for an assault and battery, or affray, five dollars; on every other conviction or indictment or presentment, five dollars; and for every exhibition of a faro-bank, or any other kind of gaming-table, fifty dollars; for every person who knowingly suffers unlawful gaming in his house, fifty dollars. And it shall be the duty of the clerk to tax the fees aforesaid, in the bill of costs, which, when collected, shall be paid to the solicitor.

Solicitors, their duties.

Emoluments.

SEC. 3. *And be it further enacted,* That if the attorney general, or any solicitor, shall fail to attend at either of the courts when it may be his duty to attend, the judge or judges of the

On failure of the attorney general or solicitor, court may appoint another attorney.

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* For this see title 50, "Public Officers."

same, are hereby authorized, from time to time, as he or they may think fit, to employ an attorney to prosecute for the state, who shall be paid by the attorney general, or solicitor, in whose stead he may act, such compensation as shall be directed by the court, before whom the services shall be rendered.

NOTE.—Sections 4, 5, and 6, relate to the secretary of state, the comptroller, and treasurer, and will be found under title 50, "Public Officers."

CHAPTER IV.

An Act to alter and amend the laws regulating the admission and practice of Counsellors and Attorneys at Law.—*Passed December* 16, 1819.

Counsellors and attorneys to be licensed by the supreme court.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That hereafter, no person shall be permitted by any court to practise therein as counsellor or attorney at law, unless he shall have obtained a license from the supreme court of this state, and it shall be the duty of the said court, when application shall be made by any person for a license as aforesaid, on his producing satisfactory evidence that he sustains a good moral character, to examine, or cause to be examined in open court the person so applying; and if, after such examination, it be the opinion of said court that he is duly qualified, it shall be the duty of the judges thereof to grant a license under their hands and seals, which shall be attested by the clerk of said court:

Proviso.

Provided, That nothing in this act contained shall be so construed, as to affect any person who may have obtained a license from the governor of the Mississippi Territory, previous to the division of the same, and was an inhabitant of this state at the time of the adoption of the constitution, or from the governor of the Alabama Territory, or of this state; but such person shall be permitted to practise as counsellor or attorney at law in any court of law or equity within this state, by virtue of such license.

Oath of counsellor and attorney.

SEC. 2. *And be it further enacted,* That every counsellor or attorney, before he be permitted to practise, shall take the following oath or affirmation, to wit.: "I ——, do solemnly swear, that I will honestly demean myself in the practice of a counsellor or attorney at law, and will execute my said office according to the best of my skill and abilities." Which oath or affirmation shall be administered in presence of the court.

Who may practise.

SEC. 3. *And be it further enacted,* That no judge or justice of any court, or sheriff, or under sheriff, shall appear or plead as attorney in any court in this state; and no clerk or deputy clerk of any court, shall practise as counsellor or attorney in the court of which he is clerk or deputy clerk, under the penalty of being fined by such court, in the sum of fifty dollars for every such offence, to be applied to the use of the county in which the offence shall have been committed.

SEC. 4. *And be it further enacted,* That all acts and parts of acts, coming within the meaning and purview of this act be, and the same are hereby repealed.

CHAPTER V.

An Act to amend an Act passed at Huntsville on the sixteenth day of December, 1819, entitled "An Act to alter and amend the laws regulating the admission and practice of Counsellors and Attorneys at Law.—*Passed November* 24, 1820.

Grant licenses to persons who have presided as judges.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, when any person shall make application for a license to practise, and it shall be known to the judges of the supreme court, that he has presided as a circuit judge in this state, or the Mississippi Territory, it shall be the duty of the said court to grant to him a license without examination, any law to the contrary notwithstanding.

SEC. 2. *Be it further enacted,* That all laws or parts of laws repugnant to the provisions of this act be, and the same are hereby repealed.

CHAPTER VI.

An Act to amend an Act, to alter and amend the laws regulating the admission and practice of Counsellors and Attorneys at Law.—*Passed June* 14, 1821.

The judges may examine.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall and may be lawful for any two judges of the circuit courts in this state, to grant license to attorneys to practise in the circuit or county courts, any law to the contrary notwithstanding.

CHAPTER VII.

Extracts from an Act supplementary to an Act making appropriations for the year one thousand eight hundred and twenty-one, and for other purposes.—*Passed June* 15, 1821.

Judges of county court authorized to practise law in one circuit court.

SEC. 4. *And be it further enacted,* That from and after the passage of this act, any judge or justice of the county court, who has been regularly licensed to practise law in this state, shall be allowed to practise in the circuit court of the county in which he resides, and in no other court: *Provided,* That he shall not be engaged directly or indirectly in any cause which may have been determined or tried before him, any law to the contrary notwithstanding.

Judges elected by the assembly, election declared to be valid.

SEC. 5. *And be it further enacted,* That the election of judges of the county courts, made by the present general assembly, is hereby declared to be valid to all intents and purposes.

NOTE.—For the three first sections, see "Laws and Legislature."

BAIL IN CIVIL CASES.—1807.

CHAPTER I.

An Act concerning Bail in Civil Cases.—*Passed in February*, 1807.

In what cases bail shall be required.

[Sec. 1. *Be it enacted by the Legislative Council, and House of Representatives of the Mississippi Territory, in general assembly convened*: That in all actions, to be commenced in any court of record in this territory, and founded on any specialty bill, or note in writing, signed by the defendant, or on the judgment of any court, foreign or domestic, and the nature of such action endorsed on the writ, attested by the clerk, or attorney for the plaintiff, setting forth the dates of such specialties, bills, notes or judgments; and the sum or sums which appear thereby secured and unpaid; the defendant or defendants shall be held to bail of course for the sum or sums so endorsed. And in all actions of account, covenant broken, and actions founded on verbal contracts, and assumpsit in law, in which the plaintiff or other credible person can ascertain the sum or sums due, or damages sustained; and either of them make affidavit thereof, to the best of his or her knowledge and belief: and the same be filed in the clerk's office, the clerk shall endorse on the writ the sum sworn to: and the defendant or defendants shall be held to bail for the sum or sums so endorsed by the clerk, or attested by any justice of the peace, taking such affidavit. And in actions, sounding merely in damages, where the same cannot be ascertained as aforesaid, the defendant or defendants shall not be held to bail, except by order of the court, or some one of the judges or justices thereof, upon sufficient cause shown by affidavit: and such order, and the sum for which bail is required, be endorsed on the writ by the court, judge or justice. *Provided*, That executors and administrators, when sued in such capacity, and persons sued on such penal statutes as do not expressly require bail, shall not be held to bail in such suits.*]

Executors not to be held to bail.

Unlawfully held to bail, how discharged.

Sec. 2. *And be it further enacted*, That every person unlawfully held to bail, may be discharged therefrom, on motion to the court, into which the writ is made returnable, and filing common bail. And in every action wherein bail is not required; the process may be by *capias ad respondendum*, and it shall be endorsed thereon by the clerk, or plaintiff's attorney, that "no bail is required," to which an appearance may be effected by filing common bail. And when any writ shall issue from any of the said courts, whereupon bail is required, the sheriff or other officer, to whomsoever the same may be directed, shall take a

Sheriff to take bail bond.

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* The first section of this act has been repealed by the act of Dec. 18, 1811. It is retained merely for the purpose of connecting together the whole system with regard to bail, and of elucidating the repealing act. See repealing clause under this title, chapter 3.

bail bond with sufficient security or securities, in the penalty of double the sum for which bail is required by the endorsement on such writ: which said bond the sheriff or other officer shall return with such writ. And in case the sheriff or other officer shall neglect to take such bond, or the bail returned shall be held insufficient, on exception taken and entered, the same term to which such writ shall be made returnable, the sheriff or other officer having due notice of the taking exception, shall in either case be deemed and stand as special bail; and the plaintiff may proceed to judgment against such sheriff or other officer, as in other cases against special bail.

Sheriff to stand special bail.

Sheriff to assign bail bond.

SEC. 3. *And be it further enacted*, That all bail bonds returned to any of the said courts, shall be assigned by the sheriff, or other officer, returning the same, by endorsement thereon, in the following form, to wit. "I, A. B. sheriff (or coroner as the case may be) of the county of   do hereby assign the within obligation and condition to C. D. his executors and administrators, to be sued for according to the statute in such cases made and provided. In witness whereof I have hereunto set my hand and seal, this   day of   in the year of our Lord   ." And any sheriff or other officer, failing to make such assignment, shall be deemed and held as special bail, in the same manner as if no bail had been taken,

Form thereof.

Or to stand special bail.

Proceedings on return of defendant in custody.

SEC. 4. *And be it further enacted*, That where any sheriff shall return, that he hath taken the body of any defendant, and committed him to the prison of the county in which the arrest was made, which is hereby declared to be the proper prison for confinement, the plaintiff may enter the defendant's appearance: and he shall be at liberty to plead as if such appearance had been entered by himself: and the plaintiff may proceed to judgment as in other cases. *Nevertheless* the defendant shall not be discharged out of custody, but by putting in bail, or by rule of court, or special order of one of the territorial judges.

Bail may arrest and surrender principal.

SEC. 5. *And be it further enacted*, That the bail shall have liberty, at any time before final judgment obtained against him, to surrender to the court, from which the process issued, or to the sheriff returning such process, during the sitting of such court, or to the sheriff in the recess of such court; the principal in discharge of himself; and such bail shall at any time before such judgment, have full power and authority to arrest the body of his principal, and secure him, until he shall have an opportunity to surrender him to the sheriff who made the arrest; or his successor in office; or to the court to which the process was returnable. And such sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody as if bail had never been given.*

Recognizance of special bail.

SEC. 6. *And be it further enacted*, That it shall be lawful for any defendant in an action where special bail is required, to go before any one of the territorial judges, or a justice of the peace for the county wherein the suit was originated, to take recognizances of special bail in the following form, to wit: "Be it known, that on the day of in the year of our Lord , came A. B. before me, C. D. a justice of the peace, in and for the county of E. and undertook in behalf of F. G. to be his special bail in an action of now depending in the court of the said county of E. wherein H. I. is plaintiff, and the said F. G. defendant. And in case the said F. G. should be cast in the action, he shall pay and satisfy the condemnation of the court, or surrender his body in custody: or that he the said A. B. will do it for him. Given under my hand and seal the day and year above written, C. D. Which recognizance of special bail shall be filed in the clerk's office, among the papers in the suit, to which it has reference. But the plaintiff may object to the sufficiency of the bail at the succeeding court, of which objection the defendant shall have ten days notice, previous to the day on which such objection is intended to be made: *Provided*, The recognizance of bail be filed fifteen days before the court, at which such objection should be made. And if the court shall be of opinion, that the bail is not sufficient, the suit shall remain in the same situation as if no such recognizance had been filed.

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* See chap. 4, sec. 3, of this title.

Form.

Proviso.

Bail taken under this act special bail.

SEC. 7. *And be it further enacted*, That all bail taken according to the directions of this act, shall be deemed, held and taken as special bail, and as such be liable to the recovery of the plaintiff. But the plaintiff shall not proceed against such bail until execution hath been returned, that the defendant is not to be found in his proper county, when the plaintiff may proceed against such bail, as is usual to proceed against special bail in other cases. And the bail shall have liberty at any time before the return of the first *scire facias* against them, returned *scire feci*, or of the second returned *nihil*, to render the principal in discharge of his bail, on payment of costs, however, in either case of such *scire facias*. And such render, if made in term time, shall be to the court from whence the process issued, and if in the recess of such court, to the officer who made the arrest; which officer is hereby required to receive such render; and execute to the bail a certificate thereof; and hold the body of the defendant in custody, as if no bail had been taken. And such render and commitment, duly certified to the clerk, in vacation, or entry of render, in open court, in term time, and in either case, notice thereof given to the plaintiff, or his attorney, shall discharge the bail. And the bail shall have full power and authority to arrest the body of the principal, and secure him, to enable them to render him as aforesaid: *Provided, however*, That if such render be made before final judgment against the principal, the court or sheriff, to whichsoever such render shall be made, are hereby authorized to take the defendant's recognizance of special bail, with such other sufficient bail as he may offer: and if taken by the sheriff, he shall file the same in the court where the suit is depending,

Privileges of bail.

Proviso.

on the first day of the next term: and the bail therein shall be liable to exception in the same manner as bail in the original bail bond. And the bail shall have the same privileges, and be subjected to a recovery in the same manner.

Proceedings against bail.

SEC. 8. *And be it further enacted*, That when any *scire facias* shall by the proper officer be returned to have been made known to the bail; and they in consequence thereof shall appear, they shall be obliged to plead, and the issue shall be tried the same term to which the process shall be returned: unless sufficient cause be shown to the court to the contrary; but the bail shall not be admitted to plead *non est factum*, unless they first file an affidavit of the truth of their plea: *Provided nevertheless*, That if any sheriff shall return on any *sciere facias*, to him directed, that the principal is imprisoned by virtue of any process, civil or criminal; the court, to which such *sciere facias* is returnable, shall on motion of the plaintiff or bail, order and direct that such principal be retained where he shall be a prisoner, until the plaintiff's judgment and cost be satisfied; or he, or she otherwise discharged by due course of law: a copy of which order being served on the keeper of such prison, before such prisoner's releasement, shall be sufficient authority for him to retain such prisoner, until such order be complied with, and shall be deemed a surrender of the principal, and a discharge of the bail.

CHAPTER II.

Extract from an Act passed December 7th, 1811, entitled "An Act to empower Securities to recover Damages in a summary way."

Bail may obtain judgment by motion against persons for whose appearance they were bound.

SEC. 5. *And be it further enacted*, That in all cases where judgment hath been or shall hereafter be entered up in any of the courts of record in this territory, against any person, as bail for the appearance of another, to defend any suit, depending in such court, and the amount of such judgment, or any part thereof hath been paid, or discharged by such bail, his, her, or their heirs, executors, or administrators, it shall and may be lawful for such bail, his, her, or their heirs, executors, or administrators, to obtain judgment by motion against the person or persons, for whose appearance they were bound, his, her, or their heirs, executors or administrators, for the full amount of what shall have been paid by the said bail, his, or her heirs, executors, or administrators, in any court where judgment may have been entered up against such bail: *Provided always*, That no judgment shall be obtained by motion as aforesaid, unless the party or parties, against whom the same is prayed, shall have ten days previous notice thereof.

CHAPTER III.

An extract from "an Act regulating Judicial Proceedings.—*Passed December* 18, 1811.

How defendants are to be held to bail.

SEC. 5. *And be it further enacted*, That in all actions to be commenced in any court of record in this territory, and founded on any specialty, bill, or note in writing, signed by the defendant, or on the judgment of any court, foreign or domestic, and the nature of such action endorsed on the writ, attested by the clerk, or attorney for the plaintiff, setting forth the dates of such specialties, bills, notes or judgments, and the sum or sums which appear thereby secured and unpaid, the defendant or defendants shall be held to bail of course, for the sum or sums so endorsed; and in all actions of account, covenant broken. and actions founded on verbal contracts and assumpsit in law, in which the plaintiff or other credible person can ascertain the sum or sums due. or damages sustained, and either of them make affidavit thereof, to the best of his or her knowledge and belief, the clerk of the court in which the writ issues, or the attorney for the plaintiff shall endorse on the writ the sum so sworn to, and the defendant or defendants shall be held to bail for the sum or sums so endorsed by the clerk or attorney for the plaintiff, or attested by the justice of the peace taking such affidavit; and it shall be the duty of the plaintiff or his attorney, or the clerk, to file such affidavit forthwith, in the clerk's office from which such writ may issue, and in actions sounding merely in damages, where the same cannot be ascertained as aforesaid, the defendant or defendants shall not be held to bail, except by order of the court, or some one of the judges or justices thereof upon sufficient cause shown by the affidavit, and such order, and the sum for which bail is required, be endorsed on the writ by the court, judge, or justice: *Provided*, That executors and administrators, when sued in such capacity, and persons sued on such penal statutes as do not expressly require bail, shall not be held to bail in such suits.

Proviso as to executors, &c.

Repealing clause.

SEC. 6. *And be it further enacted*, That the first section of the act, entitled "An Act concerning Bail in Civil Cases," be, and the same is hereby repealed.

NOTE.—But see the act of 1818, in chapter 5 of this title.

CHAPTER IV.

Extracts from an Act making further regulations in Judicial Proceedings.—*Passed December* 24, 1812.

Bail to defend suit.

Judgment in detinue.

SEC. 2. *And be it further enacted*, That in all actions where bail is required, and where any original process in such cases returned, executed, and if the defendant shall fail to appear according to the commands thereof, the bail in such action may defend the suit, and shall be subject to the same judgment and recovery, as the defendant might or would have been subject to, and in actions of detinue, the bail shall be subject to the restitution of the thing sued for, whether animate or inanimate, or the alternate value according to the judgment of the court, and the bail-piece shall be so altered in such cases, as to authorize the bail, in addition to the privileges already allowed him by law, to restore the thing sued for, and if the sheriff in such cases shall not take or return bail as required of him, or the bail returned shall be judged to be insufficient by the court, and the defendant shall fail to appear and give bail in such case, the sheriff, in addition to the privileges already allowed him by law, shall have the like liberty of defending such action, and shall be subject to the same recovery as is provided above for the bail; and if the sheriff depart this life before judgment be confirmed against him, in such case the judgment shall be confirmed against his executors or administrators, or in case there be no executors or administrators, or no certificate of probate, or administration granted, then judgment may be confirmed against his estate, and a writ of *fieri facias* may in either case be issued in the name of such deceased sheriff as if he were living, and be levied on his estate.

Explanation of a former act.

SEC. 3. *And be it further enacted*, That the true intent and meaning of the fifth and seventh sections* of an act, entitled "An Act concerning Bail in Civil Cases," published in the digest of the laws of this territory, as to the privilege of the bail in surrendering his or their principal, is, and shall be construed to be, that the bail shall have liberty at any time before final judgment obtained against him on a *scire facias*, to surrender to the court from which such process issued, or to the sheriff returning such process during the sitting of such court, or to the sheriff in the recess of such court, the principal in discharge of himself, and the bail in any action shall have a right to plead in bar to any *scire facias* against him, her, or them, the death of the principal at any time previous thereto: and if on the trial of any such issue, it shall be found that the principal is not living, judgment shall be given in favour of the defendant to such *scire facias*.

NOTE.—The provisions of the law respecting bail bonds, when it becomes necessary for a justice of the peace to issue a *capias*, will be found under title 39, "Justices of the Peace," chap. 7, sec. 13. See also title 40, "Prisons," &c.

CHAPTER V.

Extracts from an Act for the better regulation of Judicial Proceedings.—*Passed February* 7, 1818.

Power of the clerk to order defendants to be held to bail.

SEC. 11. *And be it further enacted*, That hereafter, in all actions sounding in damages, it shall be lawful for the clerk of the court in which such action is commenced, or any justice of the quorum of the county where such suit may be instituted, to order the defendant or defendants to be held to bail in such sum as may seem proper, on the affidavit of the plaintiff, or other credible person, setting forth satisfactory reasons for praying such order: *Provided, however*, That it shall be the duty of the court to which such writ may be returned, on application at the first term thereof after the commencement of such action, supported by satisfactory proof, to discharge the bail taken under such order, or reduce the amount for which bail may have been required.

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* See chapter 1st of this title.

BANKS.—1816.

CHAPTER I.

An Act to establish a Bank at Huntsville, in the Mississippi Territory.*—*Passed December* 11, 1816.

Bank in Huntsville, its captal.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That a bank shall be established in the town of Huntsville, in said territory, the capital stock of which shall not exceed five hundred thousand dollars, divided into five thousand shares of one hundred dollars each.

Subscriptions to be opened.

SEC. 2. *And be it further enacted,* That subscriptions towards constituting said stock, shall be opened in the said town of Huntsville, on the first Monday of February next, under the superintendence of Leroy Pope, John P. Hickman, David Moore, Benjamin Cox, John M. Taylor, Thomas Fearne, Jesse Searcy, Clement C. Clay, and John W. Walker, or a majority of them, and shall remain open at least twenty days, and until the sum of fifty thousand dollars shall be subscribed.

Time and mode of payment.

SEC. 3. *And be it further enacted,* That the payment of said subscriptions shall be made and completed by the subscribers at the times, and in the manner following, to wit. One-eighth part thereof at the time of subscribing; three-eighth parts thereof as soon as the bank may be carried into operation, when the directors shall give notice thereof by advertisement, in some newspaper printed in the town of Huntsville, at least thirty days previous to the day on which the subscribers shall be required to pay the same, and the remainder in two equal instalments, at sixty, and one hundred and twenty days thereafter.

Incorporated.

Limitation.

Powers.

SEC. 4. *And be it further enacted,* That the subscribers to the said bank, their successors and assigns, shall be, and hereby are created a corporation and body politic, by the name and style of "The President, Directors, and Company of the Planters'† and Mechanics' Bank of Huntsville," and shall so continue until the last day of December, one thousand eight hundred and thirty seven, and by that name shall be, and are hereby made able and capable in law to have, purchase, receive, possess, enjoy, and retain to them and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects of whatsoever kind, nature, and quality, to an amount not exceeding in the whole, six hundred and fifty thousand dollars, including the amount of the capital stock aforesaid; and the same to sell, grant, demise, alien, or dispose of; to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any action, suit, matter, or thing depending in any court of law or equity; and also to make, have, and use a common seal, and the same to break, alter, and renew at their pleasure; and also to ordain, establish, and put in execution such by-laws, ordinances, and regulations, as they shall deem necessary and convenient for the government of the said corporation, not being contrary to the constitution thereof, or the laws of the United States, or the territory: and generally to do and execute all and singular the acts, matters, and things, which to them may appear necessary, or which to them it may or shall appertain to do, as incident to bodies corporate; subject nevertheless to the rules, regulations, restrictions, limitations, and provisions, herein after prescribed and declared.

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* It has not been deemed necessary to insert "An Act to establish a Bank in the Mississippi Territory," passed December 23, 1809.

† The style is altered in the next chapter.

Thirteen directors to be elected annually.

SEC. 5. *And be it further enacted,* That for the management of the affairs of the said corporation, there shall be thirteen directors annually elected, at the banking house in Huntsville, on the first Monday of January in each year, by the qualified stockholders of the capital of the said bank, and by a pleurality of votes, then and there actually given, according to the scale of voting herein after prescribed; and the directors so duly elected, shall be capable of serving, by virtue of such choice, from the first Monday in the month of January, in each year, until the end and expiration of the first Monday in the month of January in the year next ensuing, the time of each annual election, to be held by the stockholders as aforesaid, and the board of directors annually, at the first meeting after their election, in each and every year, shall proceed to elect one of their directors to be president of the corporation, who shall hold the said office during the same period for which the directors are elected as aforesaid. *Provided always,* That the first election of the directors and president of said bank, shall be at the time and for the period hereafter declared. *And provided also,* That in case it should at any time happen, that an election of directors, or an election of the president of the said bank, should not be so made as to take effect on that day, when in pursuance of the act they ought to take effect, the said corporation shall not for that cause be deemed to be dissolved, but it shall be lawful at any other time to hold such elections, and the manner of holding the elections shall be regulated by the laws and ordinances of the said corporation, and until such elections be held, the president and directors of said bank, for the time being, shall continue in office. *And provided also,* That in case of the death, resignation, or removal of the president of the said corporation, or of his absence from the territory for more than six months, the directors shall proceed to elect another president from the directors as aforesaid: and in case of the death, resignation, removal from office, or absence of a director, the vacancy may be supplied by a majority of the board.

To choose a president.

Proviso.

In case of vacancy.

At what period to choose directors.

SEC. 6. *And be it further enacted,* That as soon as the sum of fifty thousand dollars shall be subscribed, notice thereof shall be given by the superintendents in all the newspapers printed in the town of Huntsville; and the said superintendents shall, at the same time and in like manner, notify a time and place in said town of Huntsville, at the distance of at least fifteen days from the time of such notification, for proceeding to the election of thirteen directors as aforesaid; and it shall be lawful for such election, then and there made, and the persons who shall be elected as aforesaid, shall be the first directors of the said bank, and shall proceed to elect one of the directors to be president of said bank: and the directors and president of the said bank so elected, shall be capable of serving in their respective offices by virtue thereof, until the end and expiration of the first Monday of the month of January next ensuing the said election: and they shall then and thenceforth commence and continue the operations of the said bank at Huntsville.

To appoint cashier, &c.

SEC. 7. *And be it further enacted*, That the directors, for the time being, shall have power to appoint a cashier, and such officers, clerks, and servants under them, as shall be necessary for executing the business of the said corporation, and to allow them such compensations as shall be prescribed, fixed, and determined, by the laws, regulations, and ordinances of the same.

Their compensation.

Rules.

SEC. 8. *And be it further enacted*, That the following rules, regulations, limitations, and provisions, shall form the fundamental articles of the constitution of the said corporation, to wit:

Ratio of votes.

1st. The number of votes to which the stockholders shall be entitled, in voting for directors, shall be according to the number of shares, he, she, or they hold, in the proportions following, that is to say: for each and every share, not exceeding five, one vote; for every two shares above five, and not exceeding nineteen, one vote; for every three shares above nineteen, and not exceeding forty-nine, one vote; for every four shares above forty-nine, and not exceeding seventy-three, one vote; for every six shares above seventy-three, and not exceeding ninety-seven, one vote; and for every eight shares above ninety-seven, one vote: but no person, copartnership, or body politic, shall be entitled to a greater number than one hundred votes; and after the first election, no share or shares shall confer a right of voting, which shall not have been holden three calendar months previous to the day of election; and stockholders may vote by proxy.

May vote by proxy.

Who eligible at succeeding elections.

2d. Not more than three-fourths of the directors who shall be in office at the time of an annual election, shall be elected for the next succeeding year, and no director shall hold his office more than three years out of four in succession; but a director who shall be a president at the time of an election, may always be re-elected.

Who may be a director—president; but no director to have compensation.

3d. None but a stockholder, a resident citizen of this territory, shall be a director, nor shall any director be entitled to any emolument, but it shall be lawful for the president to receive such compensation as the stockholders shall at a general meeting, assign to him.

Quorum, of what number.

4th. Not less than seven directors shall constitute a board for the transaction of business, of whom the president shall always be one, except in cases of sickness or necessary absence, in which case his place may be supplied by another director, whom he, by writing under his hand, shall depute for that purpose; and the director so deputed may do and transact all the necessary business belonging to the office of president of the said corporation, during the continuance of the sickness or necessary absence of the president.

When president absent, vacancy how filled.

5th. It shall be lawful for the directors to call a general meeting of the stockholders at any time they may deem it necessary and expedient, and a number of stockholders, not less than twenty, who together shall be proprietors of one hundred shares or upwards, shall have power at any time to call a general meeting of the stockholders for purposes relative to the institution, giving at least six weeks notice in the newspapers of Huntsville, and specifying in such notice the objects of such meeting.

Meetings may be called.

Notice thereof.

6th. The cashier or treasurer, and the other officers, clerks, and servants of the corporation, shall, previously to entering on the duties of their offices, respectively give bond, with such security, and in such form as the directors shall require, conditioned for the faithful discharge of their duties respectively.

Officers to give bond.

7th. The directors shall have power at all times, giving at least forty days notice, to open subscriptions for stock, until the whole capital of five hundred thousand dollars shall be subscribed: *Provided*, That no person, copartnership, or body corporate shall subscribe for more than twenty shares within the first sixty days after the subscription shall be open.

Subscriptions for stock may be opened from time to time.

8th. The total amount of the bills emitted by the corporation, shall never exceed three times the amount of the capital stock actually paid in; and in case of excess, the directors, under whose administration it shall happen, shall be liable for the same in their natural and private capacities, and an action of debt may in such case be brought against them, or either of them, or any of their heirs, executors, or administrators, in any court of record in this territory, by any creditor or creditors of the said corporation, and may be prosecuted to judgment and execution; any condition, covenant, or agreement to the contrary notwithstanding: but the corporation shall not, on account of this provision, be the less liable for, and chargeable with, the said excess; such of the said directors who may have been absent when the said excess was contracted or created, or who may have dissented from the resolution or act, whereby the same was contracted or created, may respectively exonerate themselves from being so liable, by forthwith giving notice of the fact, and of their absence or dissent to the stockholders, at a general meeting, which they shall have power to call for that purpose.

To what amount they may issue notes.

In case of excess, how liable.

Directors as well as corporation liable for excessive issue, except absentees, &c.

9th. The stock of the said corporation shall be assignable and transferable, according to such rules as shall be instituted in that behalf, by the laws and ordinances of the same.

Stock assignable.

10th. The corporation shall not take more than at the rate of six per centum per annum for, or upon its loans or discounts.

Per centum allowed.

11th. The bills obligatory, and of credit, under the seal of

Bills obligatory and of

credit assignable.

Proviso.

Bills and notes binding on corporation, and transferable by delivery, or by assignment.

Bills and notes to be payable on delivery, except, &c.

the said corporation, which shall be made to any person or persons, shall be assignable by endorsement, under the hand or hands of said person or persons, and his, her, or their executors and administrators, and of his, her, or their assignee or assignees, and so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively, and to enable such assignee or assignees, and his, her, or their executors or administrators to maintain an action thereupon, in his, her, or their own name or names: *Provided*, That said corporation shall not make any bill obligatory, or of credit, or other obligation under its seal, for the payment of a sum less than five hundred dollars, and the bills or notes which may be issued by order of said corporation, signed by the president, and countersigned by the cashier thereof, promising the payment of money to any person or persons, his, her, or their order, or to bearer, although not under the seal of said corporation, shall be binding and obligatory upon the same, in like manner, and with like force and effect, as upon any private person, if issued by him, her, or them, in his, her, or their private or natural capacity or capacities, and shall be assignable and negotiable in like manner, as if they were so issued by such private person or persons, that is to say: those which shall be payable to any person or persons, his, her, or their order, shall be assignable by endorsement in like manner, and with the like effect as foreign bills of exchange now are; and those which are payable to bearer, shall be assignable and negotiable by delivery: *Provided*, That all bills or notes so to be issued by said corporation, shall be made payable on demand, other than bills or notes for the payment of a sum not less than fifty dollars each, and payable to the order of some person or persons, which bills or notes it shall be lawful for said corporation to make payable at any time not exceeding sixty days from the date thereof.

Half-yearly dividends; every three years statement to be rendered, &c.

Defaulters in paying stock to lose benefit of dividend.

12th. Half-yearly dividends shall be made of so much of the profits of the bank as shall appear to the directors advisable; and once in three years the directors shall lay before the stockholders, at a general meeting, for their information, an exact and particular statement of the debts which have remained unpaid after the expiration of the original credit, for a period of treble the term of that credit, and of the surplus of the profits, if any, after deducting losses and dividends; if there shall be a failure of the payment of any part of any sum subscribed to the capital of the said bank, by any person, copartnership, or body politic, the party failing shall lose the benefit of any dividend which may have accrued prior to the time for making such payment, and during the delay of the same.

No note less than one dollar.

13th. No note shall be issued of less amount than one dollar.

Remedy of bank against its debtors.

Sec. 9. *And be it further enacted*, That if any person, or persons, shall be indebted to said corporation, as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at the said bank, and shall delay payment thereof, it shall be lawful for the corporation, after having given at least ten days notice thereof, and producing to the court before whom the motion is made the certificate of the president of the bank that the debt is really and *bona fide* the property of the bank, to move for judgment, and the award of execution against such debtor or debtors, his, her, or their heir or heirs, executors or administrators, in any court of record within this territory: *Provided always*, That if the defendant or defendants shall appear and contest the claim, the court shall *instanter* empannel a jury to try the issue, and thereon give judgment accordingly: *And provided also*, That no note, bill, or bond, shall be negotiable at said bank, unless it shall be so expressed on the face of such note, bill, or bond; and all debts due from the said corporation by bond, bill, note, or otherwise, to any individual or body corporate, may be sued for and recovered in like manner.

Judgment on motion.

Jury to be empannelled to try issue.

Notes not negotiable, unless so expressed.

Summary remedy also against bank.

Sec. 10. *And be it further enacted*, That notwithstanding the expiration of the time for which the said incorporation is created, it shall be lawful to use the corporate name, style, and capacity, for the purpose of suits, for the final liquidation and settlement of the affairs and accounts of the corporation, and for the sale and disposition of their estate, real, personal, and mixed, but not for any other purpose, or in any other manner whatsoever, nor for a period exceeding two years after the expiration of the said term of incorporation.

May sue for settlement and for debts, after expiration of charter, within two years.

Sec. 11. *And be it further enacted*, That for all debts contracted by said corporation, either by bond, bill, or note, or other contract, the stockholders, at the time the said debt or debts may have been contracted, shall be liable for the same in their natural and private capacities, in proportion to the number of shares by them held, and may be proceeded against therefor, jointly and severally, in any court having jurisdiction of the same:—but this provision shall not be construed to exempt the said corporation, or the lands, tenements, goods or chattels of the same, from being also liable.

Stockholders liable for debts of bank &c. as well as corporation.

Sec. 12. *And be it further enacted*, That the directors of said bank shall, for and during the term of ten years, reserve for the territory or state in which the bank may be in operation, five hundred shares in said bank, and at any time the legislature of the state or territory shall have the aforesaid five hundred shares, or any part thereof, subscribed for, then the governor of the state or territory shall have power to appoint a number of directors, proportionate to the number of shares held by the territory or state in said bank; and the stockholders shall at the next annual election, proceed to the election of the residue of the directors, as authorized by this act; and the territory or state shall be liable for all debts contracted by said bank in their capacities as such, to the extent of the interest held by the territory or state in said bank.

Shares reserved for the territory.

Governor to appoint directors accordingly.

CHAPTER II.

An Act to alter and amend an act, entitled "An Act to establish a Bank at Huntsville.—*Passed February* 13, 1818.

Repealing clause.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That so much of the act, entitled "An Act to establish a Bank at Huntsville," as prescribes that the corporate name and style of the subscribers to said bank, shall be "the president, directors and company of the Planters' and Mechanics' Bank of Huntsville," be, and the same is hereby repealed.

Planters' and Merchants' bank.

Sec. 2. *And be it further enacted,* That the subscribers to the bank now in operation at Huntsville, their successors and assigns, incorporated by the said act, by the aforesaid name and style be, and they are hereby created a corporation, and body politic, by the name and style of "the President, Directors and company of the Planters' and Merchants' Bank of Huntsville," and by that name and style shall be known and distinguished, and by that name and style, shall be entitled to all the rights, privileges, and immunities, and subject to all the liabilities, in said act of incorporation contained.

The name binding and valid.

Sec. 3. *And be it further enacted,* That all acts heretofore done by the president, directors, and company of said bank, and all debts contracted by, or to said bank, transacting business under the name and style of the President, Directors, and Company of the Planters' and Merchants' Bank of Huntsville, shall be as binding and valid, to all intents and purposes, as if the subscribers to said bank had been, by the said act, incorporated by that name and style.

CHAPTER III.

An Act to establish the Tombeckbe Bank, in the town of St. Stephens.—*Passed February* 13, 1818.

Capital.

Superintendents.

Books to be kept open 20 days.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That there shall be established in the town of St. Stephens, a bank, the capital stock of which shall not exceed five hundred thousand dollars, divided into five thousand shares of one hundred dollars each, and the subscriptions towards constituting the said stock shall, as soon as may be after the passage of this act, twenty days notice being previously given in some newspaper of St. Stephens, be opened in the said town, under the superintendence of David Files, James A. Torbert, Denison Darling, Thomas I. Strong, Israel Pickens, James G. Lyon, Jack F. Ross, William Crawford, Abner Smith Lipscomb, William D. Gaines, Nathan Whiting, Thomas Crowell, and George Buchanan, and shall remain open twenty days at least, and until the sum of seventy thousand dollars shall be subscribed; and the money thus subscribed, shall be paid one-eighth part thereof, at the time of subscribing three-eighth parts thereof, as soon as the bank may be carried into operation, each of which payments shall be made in specie, when the directors shall give notice thereof, by advertisement, to be published in some newspaper printed in the said town of St. Stephens, at least thirty days previously to the day on which the subscribers shall be required to pay the same, and the remainder at two equal instalments, at sixty and one hundred and twenty days thereafter; and as soon as the sum of seventy thousand dollars shall be subscribed, the subscribers, their successors and assigns, shall be a body politic and corporate, by the name and style of "the President, Directors and Company of the Tombeckbe Bank," and shall so continue until the last day of December, one thousand eight hundred and thirty-eight, and capable in law to have, purchase, receive, possess, enjoy and retain, to the use of them and their successors, lands, tenements, hereditaments, goods, chattels and effects, of what kind, nature, or quality soever, to an amount not exceeding the sum of six hundred thousand dollars; and the same to grant, alien, and dispose of at pleasure; and shall by the name aforesaid, be capable and liable in law, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any suit, matter, action, or thing depending in any court of law or equity, and also to have and keep a common seal, and the same to break, alter, or amend at pleasure; and also, to ordain, establish, and put in execution, such by-laws, ordinances and regulations, not contrary to the laws of the United States, or of this territory, as they may deem necessary and expedient for the good government of the said corporation, and generally to do and execute all and singular, acts, matters, and things which are necessary and incident to bodies corporate, subject to the rules and regulations hereinafter prescribed and declared.

Time of payments.

Incorporated with power to hold property.

To make bylaws.

SEC. 2. *And be it further enacted*, That the following rules and regulations shall form, and be the fundamental articles of the constitution of the said corporation, to wit:—

1st. The number of votes to which the stockholders shall be entitled in voting for directors, shall be according to the number of shares he, she, or they hold, in the proportions following, that is to say: for each and every share not exceeding five, one vote; for every two shares above five and not exceeding nineteen, one vote; for every three shares above nineteen, and not exceeding forty-nine, one vote; for every four shares above forty-nine, and not exceeding seventy-three, one vote; for every six shares above seventy-three, and not exceeding ninety-seven, one vote; and for every eight shares above ninety-seven, one vote: but no person, copartnership, or body politic, shall be entitled to a greater number than one hundred votes; and after the first election, no share or shares shall confer a right of voting which shall not have been holden three calendar months previous to the day of election, and stockholders may vote by proxy.

Proportion of shares to each vote.

2d. Not more than three-fourths of the directors who shall

No director to continue more than three years.

be in office at the time of an annual election, shall be elected for the next succeeding year,* and no director shall hold his office, more than three years out of four, in succession; but a director who shall be a president at the time of an election, may always be re-elected.

Entitled to no emolument.

3d. None but a stockholder, a resident citizen of this territory, shall be a director, nor shall any director be entitled to any emolument; but it shall be lawful for the president to receive such compensation as the stockholders shall, at a general meeting, assign to him.

Absence of the president to be supplied by deputy.

4th. Not less than seven directors shall constitute a board for the transaction of business, of whom the president shall always be one, except in case of sickness, or necessary absence, in which case, his place may be supplied by another director, whom he, by writing under his hand, shall depute for that purpose, and the director so deputed, may do and transact all the necessary business belonging to the office of the president of the said corporation, during the continuance of the sickness, or necessary absence of the president.

Directors have power to call a general meeting. 20 stockholders also have the power.

5th. It shall be lawful for the directors to call a general meeting of the stockholders at any time they may deem it necessary and expedient, and a number of stockholders not less than twenty, who together shall be proprietors of one hundred shares, or upwards, shall have power at any time, to call a general meeting of the stockholders for purposes relative to the institution, giving at least six weeks notice in all the newspapers of St. Stephens, and specifying in such notice the object or objects of such meeting.

Directors have power to open subscriptions.

6th. The directors shall have power at all times, on giving at least forty days notice, in a St. Stephens' newspaper, to open subscriptions for stock until the whole capital stock is subscribed: *Provided*, that no person shall subscribe for more than ten shares within the first ten days after the subscription shall be opened.

Cashier, &c. to give bond and security.

7th. The cashiers, or other officers, clerks, and servants of the corporation, shall, previously to entering on the duties of their offices, respectively give bond, with such security and in such form as the directors shall require; conditioned for the faithful discharge of their duties respectively.

Amount of bills issued, not to exceed three times the capital.

Chargeable with excess.

8th. The total amount of the bills emitted by the corporation, shall never exceed three times the amount of the capital stock actually paid in; and in case of excess, the directors under whose administration it shall happen, shall be liable for the same in their natural and private capacities; and an action of debt may in such case, be brought against them, or either of them, or any of their heirs, executors, or administrators, in any court of record in this territory, by any creditor or creditors of the said corporation; and may be prosecuted to judgment and execution, any condition, covenant, or agreement to the contrary notwithstanding; but the corporation shall not on account of this provision, be the less liable for, and chargeable with the said excess; such of the said directors who may have been absent when the said excess was contracted or created, or who may have dissented from the resolution or act, whereby the same was contracted or created, may, respectively, exonerate themselves from being so liable, by forthwith giving notice of the fact, and of their absence or dissent, to the stockholders at a general meeting, which they shall have power to call for that purpose.

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* See chapter 5th.

Shall not take more than six per cent. interest.

9th. The corporation shall not take more than at the rate of six per centum per annum, for, or upon its loans or discounts.

Stock transferable.

10th. The stock of the corporation shall be assignable and transferable, according to such rules as may be made in that behalf by the directors.

Notes, how negotiable.

11th. The bills obligatory and of credit, under the seal of the said corporation, which shall be made to any person or persons, shall be assignable by endorsement under the hand or hands of said person or persons, and his, her, or their executors and administrators, and of his, her, or their assignee or assignees, and so as absolutely to transfer, and vest the property thereof, in such and every assignee or assignees, successively, and to enable such assignee or assignees, and his, her, or their executors, or administrators, to maintain an action thereupon, in his, her, or their own name or names: *Provided,* That said corporation shall not make any bill obligatory, or of credit, or other obligation, under its seal, for the payment of a sum less than five hundred dollars: and the bills or notes, which may be issued by order of said corporation, signed by the president and countersigned by the cashier thereof, promising the payment of money to any person or persons, his, her, or their order, or to bearer, although not under the seal of the said corporation, shall be binding and obligatory upon the same, in like manner, and with like force and effect, as upon any private person, if issued by him, her, or them, in his, her, or their natural or private capacity or capacities, and shall be assignable and negotiable in like manner as if they were so issued by such private person or persons; that is to say: those which shall be payable to any person or persons, his, her, or their order, shall be assignable by endorsement, in like manner, and in like effect, as foreign bills of exchange now are; and those which are payable to bearer, shall be assignable and negotiable by delivery: *Provided,* that all bills or notes to be issued by said corporation, shall be made payable on demand, other than bills or notes for the payment of a sum not less than fifty dollars, each, and payable to the order of some person or persons; which bills or notes it shall be lawful for said corporation to make payable at any time not exceeding sixty days from the date thereof.

Once in three years to lay a statement before the stockholders.

12th. Half-yearly dividends shall be made of so much of the profits of the bank as shall appear to the directors advisable; and once in three years the directors shall lay before the stockholders, at a general meeting, for their information, an exact and particular statement of the debts which have remained unpaid after the expiration of the original credits, for a period of treble the term of that credit, and of the surplus of the profits, if any, after deducting losses and dividends: If there shall be a failure of the payment of any part of any sum subscribed to the capital of the said bank, by any person, copartnership, or body politic, the party failing shall lose the benefit of any dividend which may have accrued prior to the time for making such payment, and during the delay of the same.

Forfeiture of dividends.

13. No note shall be issued of a less amount than one dollar.

No note for less than one dollar.

SEC. 3. *And be it further enacted*, That if any person or persons shall be indebted to said corporation, as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at said bank, and shall delay payment thereof, it shall be lawful for the corporation, after having given at least ten days notice thereof, and producing to the court before whom the motion is made, the certificate of the president of the bank that the debt is really and *bona fide* the property of the bank, to move for judgment, and the award of execution, against such debtor or debtors, his, her, or their heir, or heirs, executors or administrators, in any court of record within this territory: *Provided always*, That if the defendant or defendants shall appear and contest the claim, the court shall *instanter* empannel a jury to try the issue, and thereon give judgment accordingly: *And provided also*, that no note, bill, or bond, shall be negotiable at said bank, unless it shall be expressed on the face of such note, bill, or bond, and all debts from the said corporation, by bond, bill, note, or otherwise, to any individual, or body corporate, may be sued for and recovered in like manner.

How to collect debts.

No note negotiable unless so expressed on the face of it.

SEC. 4. *And be it further enacted*, That as soon as the sum of seventy thousand dollars shall be subscribed with the superintendents, it shall be lawful for them to rent or lease a house, and fit it for the business of the bank; to procure paper, plates, chests, books, stationary, and whatever may be necessary to begin the operations of the bank; and as soon as they shall have made such progress therein, as will justify the measure, call a meeting of the stockholders in the town of St. Stephens, of which they shall give public notice for twenty days in some newspaper printed in St. Stephens; and at such meeting of the stockholders, they shall proceed to the election of thirteen directors, who shall continue in office until the first Monday in January following, when there shall be a new election, and so on, in each and every year, on the same day, until there shall be a dissolution of the corporation. Immediately after each election, the directors shall meet and choose one out of their own body as president. In case of death, resignation, or absence of a director, or of the president, out of the territory for upwards of six months, the vacancy may be supplied by a majority of the board.

Superintendents to rent a house, &c.

Call a meeting and elect directors.

Elect directors every year.

SEC. 5. *And be it further enacted*, That for all debts contracted by said corporation, either by bond, bill, or note, or other contract, the stockholders at the time the said debt or debts may have been contracted, shall be liable for the same, in their natural and private capacities, in proportion to the number of shares by them held, and may be proceeded against

Stockholders liable for debts, &c.

therefor, jointly or severally, in any court having jurisdiction of the same; but this provision shall not be construed to exempt the said corporation, or the lands, tenements, goods or chattels, of the same, from being also liable.

Two-fifths of the capital to be reserved for the territory.

SEC. 6. *And be it further enacted*, That it shall be the duty of the directors to reserve, for ten years, two-fifths of the said capital stock, to be subscribed for by the territory or state, as it may be, at any time within the ten years: and at any time the legislature of the territory or state shall have the aforesaid two-fifths, or any part thereof subscribed for, then the governor of the territory or state shall have power to appoint a number of directors proportionate to the number of shares held by the territory or state in said bank, and the stockholders shall, at the next annual election, proceed to the election of the residue of the directors as authorized by this act: and the territory or state shall be liable for all debts contracted by said bank, in their capacities as such, to the extent of the interest held by the territory or state in said bank.

Territory liable, &c.

CHAPTER IV.

An Act to change the mode of increasing the Capital Stock in the Planters' and Merchants' Bank of Huntsville, and the Tombeckbe Bank, and for other purposes.—*Passed November* 21, 1818.

Shares may be sold to the highest bidder, at public auction.

SEC. 1. *Be it enacted by the Legislative Council, and House of Representatives of the Alabama Territory, in general assembly convened*, That it shall and may be lawful for the Directors of the Planters' and Merchants' Bank of Huntsville, and they are hereby authorized to increase the capital stock of said bank, by selling from time to time to the highest bidder, at public auction, such number of shares as they may deem proper, upon the terms and conditions following—viz: thirty days notice shall be given in the "Alabama Republican," of the time at which such sale shall commence at the bank; each lot of shares shall not exceed five: and no individual, copartnership, nor body politic, shall be permitted to purchase, directly or indirectly, more than twenty shares, during the first six days of the sale, and a declaration on oath, to that effect, shall be administered to purchasers by the superintendents.

Benefit to old stockholders.

SEC. 2. *And be it further enacted*, That whatsoever profit may be made by such disposition of stock, the same shall enure to the use and benefit of all those who are stockholders at the time of every such extension and increase of capital stock: *Provided*, That such profit shall not exceed ten per centum. The residue of such profit, or excess, shall enure to the use of Green Academy, in the county of Madison; and it is hereby made the duty of the president of the said bank, to cause the same to be paid over to the order of those who may be appointed to govern, manage, or superintend said academy.

Not to impair, &c.

SEC. 3. *And be it further enacted*, That nothing in this act contained, shall be construed to impair the right of the territory to subscribe at the rate of one hundred dollars per share, for such shares as are reserved for that purpose by charter, nor shall any thing herein contained be so construed, as to enable the said directors to increase the capital stock at any time beyond the sum of five hundred thousand dollars.

Trustees. SEC. 4. *And be it further enacted*, That Lemuel Mead, Henry Chambers, Henry Minor, John M. Taylor, Clement C. Clay, and John Williams Walker be, and they are hereby appointed trustees to Green Academy, in addition to those already in office.

Privileges extended to Tombeckbe bank. SEC. 5. *And be it further enacted*, That the same privileges herein granted to the Planters' and Merchants' Bank of Huntsville, are hereby extended to, and granted on the same terms, provisions, and limitations to the Tombeckbe Bank, and any excess of profit above ten per centum, as above allowed to the stockholders, shall be paid over by the president of the said Tombeckbe Bank, to the president and trustees of the St. Stephens Academy.

CHAPTER V.

An Act to amend an act, passed at St. Stephens the thirteenth of February, eighteen hundred and eighteen, to establish the Tombeckbe Bank.—*Passed December* 7, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That so much of the act to incorporate the President, Directors and Company of the Tombeckbe bank, as declares that no person shall be eligible as a director of said bank, for more than than three years in succession, be, and the same is hereby repealed.

CHAPTER VI.

An Act to establish a Bank in the town of Mobile.—*Passed November* 20, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the state of Alabama, in general assembly convened*, That a bank shall be established in the town of Mobile, in the Alabama Territory, the capital stock of which shall not exceed five hundred thousand dollars, divided into five thousand shares, of one hundred dollars each. Capital stock.

SEC. 2. *And be it further enacted*, That subscriptions towards constituting said bank, shall be opened in the town of Mobile, on the first Monday of January next, under the superintendence of Lewis Judson, Alvan Robishow, Addin Lewis, David W. Crawford, John King, Jun. Thomas L. Hallett, Henry Gunnison, Oliver Holman, Henry Stickney, Terry M'Cusker, Benjamin H. Hall, and John Whitehead, or a majority of them, and shall remain open at least twenty days, and until the sum of seventy thousand dollars shall be subscribed. Superintendents.

SEC. 3. *And be it further enacted*, That the payments of the said subscriptions shall be made and completed by the subscribers, at the times, and in the manner following, to wit: one-eighth part thereof at the time of subscribing, three-eighth parts thereof, as soon as the bank may be carried into operation, each of which payments shall be made in gold or silver, when the directors shall give notice thereof by advertisement in some newspaper printed in the town of Mobile, at least thirty days previous to the day on which the subscribers shall be required to pay the same, and the remainder in two equal instalments, at sixty and one hundred and twenty days thereafter.

Payment in gold or silver.

SEC. 4. *And be it further enacted*, That the subscribers to the said bank, their successors and assigns, shall be, and hereby are created a body corporate and politic, by the name and style of "The President, Directors, and Co. of the Bank of Mobile," and shall so continue until the first day of January, one thousand eight hundred and thirty-nine, and by that name shall be, and are hereby made able and capable in law, to have, purchase, receive, possess, enjoy, and retain to them, and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects of whatsoever kind, nature, and quality, to an amount not exceeding in the whole, six hundred and fifty thousand dollars, including the amount of the capital stock aforesaid; and the same to sell, grant, demise, alien, or dispose of; to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any suit, action, matter, or thing depending in any court of law or equity; and also to make, have, and use a common seal;—and the same to break, alter, and renew at their pleasure, and also, ordain, establish, and put in execution, such by-laws, and ordinances, and regulations, as they shall deem necessary and convenient, for the government of the said corporation, not being contrary to the constitution thereof, or the laws of the United States, or of this territory; and generally to do and execute all and singular, the acts, matters, and things, which to them may appear necessary, or which to them it shall or may appertain to do, as incident to bodies corporate, subject nevertheless to the rules, regulations, restrictions, limitations, and provisions, herein after prescribed and declared.

Name.

Seal.

Make by-laws.

SEC. 5. *And be it further enacted*, That for the management of the affairs of said corporation, there shall be thirteen directors annually elected, at the banking house in Mobile, on the first Monday in January, in each year, by the qualified stockholders of the capital of said bank, and by a plurality of votes then and there actually given, according to the scale of voting herein after prescribed; and the directors so duly elected, shall be capable of serving by virtue of such choice, from the first Monday in the month of January, in each year, until the end and expiration of the first Monday in the month of January, of the year next ensuing; the time of each annual election, to be held by the stockholders as aforesaid; and the board of directors annually at the first meeting after their election, in each and every year, shall proceed to elect one of the directors to be president of the corporation, who shall hold said office during the same period for which the directors are elected as afore-

Elect directors.

Elect president.

Proviso.

said; *Provided always*, that the first election of the directors and president of the said bank shall be at the time, and for the period hereafter declared. *And provided also*, that in case it should at any time happen that an election of directors, or an election of the president of the said bank, should not be so made as to take effect on any day, when in pursuance of this act, they ought to take effect, the said corporation shall not for that cause be deemed to be dissolved, but it shall be lawful at any other time, to hold such election, and the manner of holding the elections, shall be regulated by the laws and ordinances of the said corporation, and until such election be held, the president and directors of said bank, for the time being, shall continue in office. *And provided also*, that in case of death, resignation, or removal of the president of the said corporation, or of his absence from this territory for more than six months, the directors shall proceed to elect another president from the directors as aforesaid, and in case of the death, resignation, removal from office, or absence of a director, the vacancy may be supplied by a majority of the board.

In case of death, &c.

SEC. 6. *And be it further enacted*, That as soon as the sum of seventy thousand dollars shall be subscribed, notice thereof shall be given by the superintendents, in all the newspapers printed in the town of Mobile, and the said superintendents shall at the same time, and in like manner, notify a time and place in said town of Mobile, at the distance of at least fifteen days from the time of such notification, for proceeding to the election of thirteen directors as aforesaid, and it shall be lawful for such election, then and there made, and the persons who shall be elected as aforesaid, shall be the first directors of the said bank, and shall proceed to elect one of the directors to be president of said bank; and the directors and president of the said bank, so elected, shall be capable of serving in their respective offices by virtue thereof, until the end and expiration of the first Monday of the month of January next ensuing the said election, and they shall then and thenceforth commence and continue the operations of the said bank at Mobile.

Elect directors.

Elect officers.

SEC. 7. *And be it further enacted*, That the directors, for the time being, shall have power to appoint a cashier, and such officers, clerks, and servants under them, as shall be necessary for executing the business of the said corporation, and to allow them such compensation as shall be prescribed, fixed, and determined by the laws, regulations, and ordinances of the same.

SEC. 8. *And be it further enacted*, That the following rules, regulations, limitations, and provisions, shall form the fundamental articles of the constitution of the said corporation, to wit:

Ratio of votes.

1st. The number of votes to which the stockholders shall be entitled in voting for directors, shall be according to the number of shares he, she, or they hold, in the proportions following, that is to say: for each and every share, not exceeding five, one vote, for every two shares not exceeding nineteen, one vote; for every three shares above nineteen and not exceeding forty-nine, one vote; for every four shares above forty-nine, and not exceeding seventy-three, one vote; for every six shares above seventy-three, and not exceeding ninety-seven, one vote; and for every eight shares above ninety-seven, one vote; but no person, copartnership, or body politic, shall be entitled to a greater number than one hundred votes; and after the first election, no share or shares shall confer a right of voting, which shall not have been holden three calendar months previous to the day of election, and stockholders may vote by proxy.

Three-fourths may be re-elected.

2d. Not more than three-fourths of the directors, who shall be in at the time of an annual election, shall be elected for the next succeeding year; and no director shall hold his office more than three years out of four, in succession, but a director who shall be a president at the time of an annual election, may always be re-elected.

Qualification for directors.

3d. None but a stockholder a resident citizen of this territory shall be a director, nor shall any director be entitled to any emolument; but it shall be lawful for the president to receive such compensation, as the stockholders shall at a general meeting assign to him.

Number for board.

4th. Not less than seven members shall constitute a board for the transaction of business, of whom the president shall always be one, except in cases of sickness or necessary absence, in which case his place may be supplied by another director, whom he by writing under his hand, shall depute for that purpose, and the director so deputed may do and transact all necessary business belonging to the office of the president of the said corporation, during the continuance of the sickness or necessary absence of the president.

Power to call meetings.

5th. It shall be lawful for the directors to call a general meeting of the stockholders, at any time they may deem it necessary and expedient, and a number of stockholders not less than twenty, who together shall be proprietors of one hundred shares or upwards, shall have power at any time to call a general meeting of the stockholders, for purposes relative to the institution, giving at least six weeks notice in the newspapers of Mobile, and specifying in such notice, the object or objects of such meeting.

Officers to take oath.

6th. The cashier or treasurer, and the other officers, clerks and servants of the corporation, shall previously to entering on the duties of their offices, respectively give bond, with such security, and in such form as the directors shall require, conditioned for the faithful discharge of their duties respectively.

Power to open subscriptions.

7th. The directors shall have power at all times, giving at least forty days notice, to open subscriptions for stock, until the whole capital of five hundred thousand dollars shall be subscribed: *Provided*, That no person, copartnership, or body corporate shall subscribe for more than twenty shares within the first six days after the subscription shall be open; and the commissioners are hereby authorized and required to administer an oath to any and every person subscribing, that he, she, or they have not subscribed, and are not directly or indirectly subscribing for a greater number of shares, within the time aforesaid, than is hereby limited.

Amount of bills to be emitted.

8th. The total amount of the bills emitted by the corporation, shall never exceed three times the amount of the capital stock actually paid in, and in case of excess, the directors under whose administration it shall happen, shall be liable for the same in their natural and private capacities, and an action of debt may, in such case, be brought against them, or either of them, or any of their heirs, executors, or administrators, in any court of record in this territory, by any creditor or creditors of the said corporation, and may be prosecuted to judgment and execution; any condition, covenant, or agreement to the contrary notwithstanding; but the corporation shall not, on account of this provision, be the less liable for and chargeable with the said excess; such of the directors who may have been absent when the said excess was contracted, or created, or who may have dissented from the resolution or act, whereby the same was contracted or created, may respectively exonerate themselves from being so liable, by forthwith giving notice of the fact, and their absence or dissent, to the stockholders at a general meeting, which they shall have power to call for that purpose.

Directors, how liable.

Stock transferable.

9th. The stock of said corporation shall be assignable and transferable, according to such rules as shall be instituted in that behalf, by the laws and ordinances of the same.

Six per cent.

10th. The corporation shall not take more than at the rate of six per centum per annum, for or upon its loans or discounts.

Bills assignable.

11th. The bills obligatory, and of credit, under the seal of the said corporation, which shall be made to any person or persons, shall be assignable by endorsement, under the hand or hands of said person or persons, and his, her, or their executors and administrators, and of his, her, or their assignee or assignees, and so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively, and to enable such assignee or assignees, and his, her, or their executors or administrators, to maintain an action thereupon, in his, her, or their own name or names: *Provided*, That said corporation shall not make any bill obligatory or of credit, or other obligation, under its seal for the payment of a less sum than five hundred dollars, and the bills or notes which may be issued by order of said corporation, signed by the president, and countersigned by the cashier thereof, promising the payment of money to any person or persons, his, her or their order, or bearer, although not under the seal of the said corporation, shall be binding and obligatory upon the same, in like manner, and with like force and effect, as upon any private person, if issued by him, her, or them, in his, her, or their private or natural capacities; and shall be assignable and negotiable in like manner as if they were so issued, by such private person or persons, that is to say: those which shall be payable to any person or persons, his, her, or their order, shall be assignable by endorsement, in like manner, and with like effect, as foreign bills of exchange now

Proviso.

are, and those which are payable to bearer, shall be assignable and negotiable by delivery: *Provided*, That all bills or notes, so to be issued by said corporation, shall be made payable on demand, other than bills or notes for the payment of a sum not less than fifty dollars each, and payable to the order of some person or persons, which bills or notes it shall be lawful for said corporation to make payable at any time not exceeding sixty days from the date thereof. Proviso.

12th. Half-yearly dividends shall be made of so much of the profits of the bank, as shall appear to the directors advisable; and once in three years the directors shall lay before the stockholders, at a general meeting, for their information, an exact and particular statement of the debts which have remained unpaid after the expiration of the original credit, for a period for treble the term of that credit, and of the surplus of the profits, if any, after deducting losses and dividends; if there shall be a failure of the payment of any part of the sum subscribed to the capital of the said bank, by any person, copartnership, or body politic, the party failing shall lose the benefit of any dividend which may have accrued prior to the time for making payment, and during the delay of the same. Half-yearly dividends.

13th. No note shall be issued of less amount than one dollar.

Sec. 9. *And be it further enacted*, That if any person or persons shall be indebted to said corporation, as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at the said bank, and shall delay payment thereof, it shall be lawful for the corporation, after having given at least ten days notice thereof, and producing to the court before whom the motion is made, the certificate of the president of the bank, that the debt is really and *bona fide* the property of the bank, to move for judgment, and award of execution, against such debtor or debtors, his, her, or their heir or heirs, executors or administrators, in any court of record within this territory: *Provided always*, That if the defendant, or defendants, shall appear, and contest the claim, the court shall *instanter* empannel a jury to try the issue, and thereon give judgment accordingly: *And Provided also*, That no note, bill, or bond, shall be negotiable at said bank, unless it shall be so expressed on the face of such note, bill, or bond; and all debts due by the said corporation, by bond, bill, note, or otherwise, to any individual or body corporate, may be sued for and recovered in like manner. Notes, how collected. Proviso.

Sec. 10. *And be it further enacted*, That notwithstanding the expiration of the time for which the said corporation is created, it shall be lawful to use the corporate name, style, and capacity, for the purpose of suits, for the final liquidation and settlement of the affairs and accounts of the corporation, and for the sale and disposition of their estates, real, personal, and mixed, but not for any other purpose, or in any other manner whatsoever, nor for a period exceeding two years after the expiration of the said term of incorporation. Continuance to collect.

Sec. 11. *And be it further enacted*, That for all debts contracted by said corporation, either by bond, bill, or note, or other Stockholders liable.

contract, the stockholders at the time the said debt or debts may have been contracted, shall be liable for the same in their natural or private capacities, in proportion to the number of shares by them held, and may be proceeded against therefor, jointly or severally, in any court having jurisdiction of the same; but this provision shall not be construed to exempt the said corporation, or the lands, tenements, goods, or chattels of the same, from being also liable.

One-fifth reserved.

SEC. 12. *And be it further enacted*, That the directors of said bank shall, for and during the term of ten years, reserve for the territory or state, in which the bank may be in operation, one-fifth of the shares in said bank, and at any time the legislature of the state or territory shall have the aforesaid one-fifth of the shares, or any part thereof subscribed for, then the governor of the state or territory shall have power to appoint a number of directors, proportionate to the number of shares held by the territory or state in said bank; and the stockholders shall, at the next annual election, proceed to the election of the residue of the directors, as authorized by this act; and the territory or state shall be liable for all debts contracted by said bank in their capacities as such, to the extent of interest held by the territory or state in said bank.

NOTE.—See, under title "Interest and Usury," the oath required of Bank Directors.

CHAPTER VII.

CONSTITUTION.

ESTABLISHMENT OF BANKS.

SEC. 1. One State Bank may be established, with such number of branches as the General Assembly may from time to time deem expedient: *Provided*, That no branch bank shall be established, nor bank charter renewed, under the authority of this state, without the concurrence of two-thirds of both Houses of the General Assembly; *And provided also*, That not more than one bank, nor branch bank, shall be established, nor bank charter renewed, at any one session of the general assembly, nor shall any bank or branch bank be established, or bank charter be renewed, but in conformity with the following rules:

1st. At least two-fifths of the capital stock shall be reserved to the state.

2d. A proportion of power in the direction of the bank, shall be reserved to the state, equal at least to its proportion of stock therein.

3d. The state, and the individual stockholders, shall be liable respectively, for the debts of the bank, in proportion to their stock holden therein.

4th. The remedy for collecting debts shall be reciprocal, for and against the bank.

5th. No bank shall commence operations until half of the capital stock subscribed for, be actually paid, in gold or silver; which amount shall, in no case, be less than one hundred thousand dollars.

6th. In case any bank or branch bank shall neglect or refuse to pay, on demand, any bill, note, or obligation, issued by the corporation, according to the promise therein expressed, the holder of any such note, bill, or obligation, shall be entitled to receive and recover interest thereon, until the same shall be paid, or specie payments are resumed by said bank, at the rate of twelve per centum per annum. from the date of such demand, unless the General Assembly shall sanction such suspension of specie payments; and the General Assembly shall have power, after such neglect or refusal, to adopt such measures as they may deem proper, to protect and secure the rights of all concerned; and to declare the charter of such bank forfeited.

7th. After the establishment of a general state bank, the banks of this state now existing, may be admitted as branches thereof, upon such terms as the Legislature and the said banks may agree, subject nevertheless to the preceding rules.

CHAPTER VIII.

An Act to incorporate the Subscribers to the Bank of the State of Alabama.—*Passed Dec.* 21, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the state of Alabama, in General Assembly convened*, That a bank of the state of Alabama shall be established, the capital stock of which shall not exceed two millions of dollars, divided into twenty thousand shares, of one hundred dollars each, one half of which stock shall be reserved to the state; said bank to be at the town of Cahawba, subject however to be removed from that place, whenever the seat of government shall be changed, and in that event the bank may be removed to the place at which the seat of government shall be established.

Bank established at Cahawba.

Removal.

SEC. 2. *And be it further enacted*, That subscriptions for the sum of five hundred thousand dollars towards constituting the capital of said bank, shall be opened on the first Monday in May next, at Cahawba, for the sum of one thousand and fifty shares, under the superintendence of John Taylor, (late of Pendleton) Anderson Crenshaw, Henry Hitchcock, Edmund Lane, and John Scott: at Huntsville, for the sum of one thousand and fifty shares, under the superintendence of John M'Kinlay, Lemuel Mead, Nicholas Hobson, Frederick James, and Stephen S. Ewing: at Claiborne, for the sum of seven hundred shares, under the superintendence of James H. Draughan, John Watkins, John Gayle, Thomas Wiggins, and James Dellet, Jun.: at Courtland, for the subscription of three hundred shares, under the superintendence of William Booth, John F. Hickman, John Mosely, Anthony Winston, and Theophilus W. Cockburn: at the town of Blakeley, for two hundred shares, under the superintendence of James W. Peters, Fran-

Subscriptions opened.

Cahawba.

Huntsville.

Claiborne.

Courtland.

Blakeley.

Demopolis.
Tuskaloosa.
St. Stephens.
Mobile.
Montgomery.
Subscription for shares limited.
The shares subscribed for.
How paid.

cis B. Stockton, Lewis Marchand, Benjamin Jones Randall, and James L. Seabury: at Demopolis, for two hundred shares, under the superintendence of Pitkin Barnes, Allen Glover, George S. Gaines, and Charles L. Desnouette: at Tuskaloosa, for the sum of five hundred shares, under the superintendence of Benjamin Cox, Levin Powell, Gilbert Saltonstall, John M. Jenkins, and John Owen: at St. Stephens, for the sum of five hundred shares, under the superintendence of Israel Pickens, Thomas Malone, William Crawford, Jack F. Ross, and George Buchanan: at Mobile, for the sum of two hundred and fifty shares, under the superintendence of Lewis Judson Addin Lewis, William H. Robertson, Archibald Gordon, and Francis W. Armstrong: at Montgomery, for the sum of two hundred and fifty shares, under the superintendence of John D. Bibb, John Goldthwaite, Nimrod E. Benson, Clement Freeney, John Edmondson, and a majority of said superintendents, at the places above mentioned, respectively, shall be sufficient to perform the duties of their appointment, and they shall keep the subscription open for the term of forty days, (Sundays excepted) unless the subscription shall be sooner filled, when the same shall be closed, and no person, copartnership, or body politic, shall be permitted, by person or attorney, to subscribe for more than twenty shares in one day, during the first thirty days that the said subscription shall be open. The amount of the share or shares subscribed for, shall be paid by the several and respective subscribers, in gold or silver, one-fourth thereof at the time of subscribing, one-eighth within sixty days thereafter, one-twentieth one hundred and fifty days thereafter, and the remainder of the subscription sixty days after the bank shall go into operation.

Superintendents to make return of subscription.

SEC. 3. *And be it further enacted*, That immediately after the superintendents appointed at Huntsville, Claiborne, Courtland, Blakeley, Demopolis, Tuskaloosa, St. Stephens, Mobile, and Montgomery, shall have closed their subscriptions, they shall respectively transmit, and deliver to the superintendents at Cahawba, a list of the several subscribers at such places respectively, and of the share or shares to each and every subscriber belonging: and on the receipt of the said subscriptions, the superintendents at Cahawba, or a majority of them, shall immediately thereafter convene, and proceed to take an account of the said subscriptions, and in case the aggregate amount of said subscriptions made during the period aforesaid, at the places aforesaid, shall amount to five hundred thousand dollars, the subscriptions to complete said sum shall be and remain open at Cahawba aforesaid, under the direction of the superintendents appointed for that place, and the subscriptions may be there made, by any individual, company, or body politic, for any number of shares not exceeding in the whole the amount required to complete the said sum of five hundred thousand dollars.

Stock paid in to be deposit-

SEC. 4. *And be it further enacted*, That the superintendents respectively shall deposit the gold and silver coin by them respectively received as aforesaid, from the subscribers to the capital of said bank, in some place of secure and safe keeping, so that the same may and shall be specifically delivered and transferred, as the same were by them respectively received, to the President, Directors, and Company of the Bank of the State of Alabama, or their order, as soon as shall be required after the organization of said bank; and the superintendents appointed at Huntsville, Claiborne, Courtland, Blakeley, Demopolis, Tuskaloosa, Mobile, St. Stephens, and Montgomery, shall respectively, immediately after each payment shall become due by the subscribers, according to the provisions of the third section of this act, notify the superintendents appointed at Cahawba, of the amount of gold and silver actually received by them on account of such payment; and the said superintendents of the subscriptions to the capital of the said bank as aforesaid, shall receive a reasonable compensation for their services respectively, and shall be allowed all reasonable charges and expenses incurred in the execution of their trust, to be paid by the president, directors, and company of the bank, out of the funds thereof.

ed for safe keeping.

Superintendents' compensation.

SEC. 5. *And be it further enacted*, That the subscribers to the said bank, their successors and assigns, shall be, and they are hereby created, a corporation and body politic, by the name and style of "The President, Directors, and Company of the Bank of the State of Alabama," and shall so continue until the first day of January, one thousand eight hundred and thirty-five, and by that name shall be, and are hereby made able and capable in law to have, purchase, receive, possess, enjoy, and retain to them and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects of whatsoever kind, nature, and quality, to an amount not exceeding in the whole four millions of dollars, including the amount of capital stock aforesaid. And the same to sell, grant, demise, alien, or dispose of; to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended in any suit, action, matter, or thing, in any court either of law or equity, or any other place whatsoever, and also to make, have, and use a common seal, and the same to break, alter, and renew at their pleasure. And also to ordain, establish, and put in execution, such by-laws, ordinances, and regulations as they shall deem necessary and convenient for the government of said corporation, not being contrary to the constitution or laws of this state, or of the United States; and generally to do and execute all and singular the acts, matters, and things, which to them may appear necessary, or which to them it shall or may appertain to do, as incident to bodies corporate, subject nevertheless, in addition to the restrictions in the constitution, to the rules, regulations, restrictions, limitations, and provisions herein after prescribed and declared.

Corporate powers.

SEC. 6. *And be it further enacted*, That for the management of the affairs of the said corporation, there shall be thirteen directors, six of whom, together with the president, shall be annually elected, by joint vote of both houses of the General

President and directors, how appointed.

Assembly, and the remainder shall be annually elected at the banking house in Cahawba, on the third Monday of November in each year, by the individual stockholders of the capital of the said bank, and by a pleurality of votes, then and there actually given, according to the scale of voting herein after prescribed. And the thirteen directors so duly elected, shall be capable of serving by virtue of such election for and during the term of one year, from and after the date of such election respectively: *Provided*, That the first election of directors shall not be included in the before-mentioned general regulations: *And provided also*, That in case it should at any time happen, that an election of directors, or an election of the president of said bank, should not be made as to take effect on any day, when in pursuance of this act they ought to take effect, the said corporation shall not for that cause be deemed to be dissolved, but it shall be lawful at any other time, to hold such elections; and the manner of holding such elections shall be regulated by the laws and ordinances of the said corporation, and until such election be held, the president and directors of said bank, for the time being, shall continue in office: *And provided also*, That in case of the death, resignation, or removal of the president of the said corporation, or of his absence from the state for more than six months, the directors shall proceed to elect another president from the directors as aforesaid; and in case of the death, resignation, or removal from office, or absence of a director, the vacancy may be supplied by a majority of the board.

Vacancies filled.

First election of directors.

Sec. 7. *And be it further enacted*, That as soon as one hundred thousand dollars shall be actually paid in gold or silver coin, to the superintendents of the subscriptions, the said superintendents of the said subscriptions at Cahawba, shall give notice of the same in all the newspapers printed in the state, and the said superintendents shall at the same time, and in like manner, notify a time and place, in said town of Cahawba; at the distance of at least forty days from the time of such notification, for the proceeding to the election of the directors aforesaid, except those to which the state may be entitled, and the directors thus elected shall be the first directors of said bank, and shall proceed to elect one of the directors president of said bank, and the directors and president of said bank so elected shall be capable of serving in their respective offices, until others shall be elected by the state and stockholders according to the provisions of this act; and they shall then and thenceforth commence and continue the operations of the said bank at Cahawba.

Directors to appoint officers.

Sec. 8. *And be it further enacted*, That the directors for the time being, shall have power to appoint a cashier, and such officers, clerks, and servants under them, as shall be necessary for executing the business of the said corporation, and to allow them such compensation as shall be prescribed, fixed, and determined by the by-laws, regulations, and ordinances of the same.

Articles of constitution.

Sec. 9. *And be it further enacted*, That the following rules, regulations, limitations, and provisions shall form the fundamental articles of the constitution of the said corporation, to wit:

Votes for directors.

1st. The number of votes to which the stockholders shall be entitled in voting for directors, shall be according to the number of shares he, she, or they hold, in the proportions following, that is to say, for every two shares, above two and not exceeding ten shares, one vote; for every four shares above ten, and not exceeding thirty, one vote; for every six shares above thirty, and not exceeding sixty, one vote; for every eight shares above sixty, and not exceeding one hundred, one vote; and for every ten shares above one hundred, one vote; but no person, copartnership, or body politic shall be entitled in his or their own right, or as proxy, to a greater number than thirty votes; and after the first election no share or shares shall confer a right of suffrage, which shall not have been holden two calendar months previous to the day of election; all stockholders may vote in elections, or on any other question touching the bank by proxy: *Provided*, the proxy be derived directly from such stockholder, and voted on by a person being a citizen of the state of Alabama.

Stockholders may vote by proxy.

2d. No preference shall be given to any stockholders in loans or discount on account of his stock.

3d. None but a stockholder, a resident citizen of this state, shall be a director, nor shall any director be entitled to any emoluments, nor shall any director be permitted, either directly or indirectly, to have a discount or discounts amounting to more than five thousand dollars, at any one time; but it shall be lawful for the president to receive such compensation as the stockholders shall at a general meeting assign to him.

Quorum.

4th. Not less than seven directors shall constitute a board for the transacting of business, of whom the president shall always be one, except in cases of sickness or necessary absence, in which case his absence shall be supplied by any other director, whom he by writing shall nominate for the purpose, and in the event of the death of the president, or his failing to make such nomination, the directors for the time being shall have power to appoint a president *pro tempore*.

Stockholders may call a meeting.

5th. A number of stockholders, not less than twenty, who together shall be proprietors of sixty shares or upwards, shall have power at any time to call a general meeting of the stockholders for purposes relative to the institution; giving at least six weeks notice in the newspapers in the town of Cahawba, and specifying in such notice the object or objects of such meeting.

Cashier to give bond.

6th. Every cashier, before he enters on the duties of his office, shall be required to give bond, with two or more securities, to the directors, in a sum not less than fifty thousand dollars, with conditions for his good behaviour.

Corporation restricted in holding property.

7th. The lands, tenements, and hereditaments, which it shall be lawful for the said corporation to hold, shall only be such as shall be requisite for its immediate accommodation in relation to the convenient transacting of business, and such as shall have been *bona fide* mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments which shall have been obtained for such debts.

Amount of notes issued, limited.

8th. The total amount of notes emitted or thrown into circulation by said corporation, together with their debts of every description, shall not at any time exceed three times the amount of the capital stock of said bank actually paid therein, unless the contracting of any greater debt, shall have been previously authorized by a law of the state; in cases of excess, the directors under whose administration it shall happen, shall be liable for the same in their natural and private capacities, and an action of debt may in such cases be brought against them or any of them, or their heirs, executors, or administrators, in any court of record, by any creditor or creditors of said corporation, and may be prosecuted to judgment and execution, any condition, covenant, or agreement to the contrary notwithstanding; but this shall not be construed to exempt the said corporation, or the lands, tenements, goods, or chattels of the same, from being also liable for, and chargeable with the said excess. Such of the said directors who may have been absent when the said excess was contracted or created, or who may have dissented from the resolution or act, whereby the same was contracted or created, may respectively exonerate themselves from being so liable, by forthwith giving notice in writing of the fact, and their absence or dissent, to the executive department of the state, to be recorded in the office of that department, and to be communicated by the governor to the legislature at their next meeting, and by forthwith giving such notice to the stockholders at a general meeting, which they shall have power to call for that purpose.

Proceedings in case of excess.

Corporation not to hold public stock.

9th. The said corporation shall not be at liberty to purchase any public stock whatever, except their own bank stock: *Provided*, the number of shares they purchase in, shall be sold out at par, or above it as the case may be, whenever opportunity offers to do so with convenience, nor shall the corporation directly or indirectly deal in or trade in any thing, except bills of exchange, gold, or silver, and promissory notes made payable in said bank, or any of its branches, or in the sale of goods really and truly pledged for money lent upon notes actually discounted in said bank, and not redeemed in due time, or in goods which shall be the produce of its lands; neither shall the corporation take more than at the rate of six per centum per annum, for, or on account of its loans or discounts.

Per cent. on discount.

Loans to government prohibited.

10th. No loan shall be made by the said corporation to any government or state, to any amount whatsoever, unless previously authorized by law of this state.

Stock transferable.

11th. The stock of the said corporation shall be assignable and transferable according to such rules and regulations as shall be prescribed by the laws and ordinances of the same.

Bills of corporation negotiable.

12th. The bills obligatory and of credit under the seal of said corporation, which shall be made to any person or persons, shall be assignable by endorsement thereupon, under the hand or hands of such person or persons, and of his, her, or their assignee or assignees, so as absolutely to transfer and vest the property in each and every assignee or assignees successively, and to enable such assignee or assignees to bring and maintain an action thereupon, in his, her, or their own name or names, and bills or notes which may be issued by order of said corporation, signed by the president, and countersigned by the principal cashier thereof, promising the payment of money to any person or persons, his, her, or their order, or to the bearer, though not under the seal of said corporation, shall be binding and obligatory upon the same in like manner, and with the like force and effect, as upon any private person or persons, if issued by him or them, in his, her, or their private or natural capacities, and shall be assignable and negotiable in like manner, as if they were so issued by such private persons—that is to say: those which shall be payable to any person or persons, his, her, or their order, shall be assignable by endorsement in like manner, and with the like effect as bills of exchange now are; and those which are payable to the bearer shall be negotiable at the said bank, and shall be, and they are hereby placed on the same footing as bills of exchange, so that the like remedy may be had for the recovery thereof, against the drawer or drawers, endorser or endorsers, and with the like effect, except so far as relates to damages, any law to the contrary notwithstanding: *Provided*, That all bills or notes issued by said bank, shall be made payable at said bank, and not at any of its branches.

Bills payable to bearer, negotiable at bank on same footing as bills of exchange.

Bills of state bank only payable at said bank.

13th. Half-yearly dividends shall be made of so much of the profits of the bank, as shall appear to the directors advisable, and once in every year, at a meeting to be held for the choice of directors, those of the preceding year shall lay before the stockholders for their information, an exact and particular statement of the general accounts and state of the corporation; if there shall be a failure in the payment of any instalment, the party failing shall lose the benefit of any dividend which may accrue during the delay of the same. It shall be lawful for the general assembly to establish branches of said bank, according to the provisions of the constitution; and whenever a branch of said bank shall be established, not more than thirteen, nor less than seven directors or managers shall be annually appointed by the directors of the mother bank, to serve one year; they shall choose a president from their own number, and each of them shall be a citizen of this state.

Semi-annual dividends.

Failures in paying instalments, shall forfeit benefit of dividend.

General assembly may establish branches.

Branch directors, how appointed.

Qualifications.

14th. The legislature shall be furnished annually, within the first week of the session, with statements of the amount of capital stock of the said corporation, and of the debts due to the same; of the money deposited therein, of the notes in circulation, and of the cash on hand; and shall have a right to inspect such general accounts in the books of the bank as shall relate to the said statement.

Annual statement to be made to general assembly

15th. The directors shall keep full and regular entries in a

Directors to keep journal.

book to be provided for that purpose, of the proceedings, and on any question when two of the directors shall require it, the ayes and noes of the directors voting shall be duly entered on their minutes, and those minutes be at all times on demand produced to the stockholders, when at a general meeting, or to the legislature, or to any committee who shall be authorized thereby to require the same.

President and cashier prohibited from purchasing public stock.

16th. No president or cashier of the bank shall directly or indirectly be concerned in the purchase or sale of any of the public stock or funds, under the penalty of ten thousand dollars, to be forfeited, one half thereof to the use of the state, and the other to the use of the informer.

A list of stockholders to be hung up.

17th. A fair and correct list of the stockholders shall be hung up at least one month before any election of directors, in the common hall of the said bank, to the end that public information may be given to the parties of those co-proprietors and stockholders.

Penalties on corporation for dealing in goods, &c.

SEC. 10. *And be it further enacted*, That if the said corporation shall deal or trade in buying or selling any goods, wares, merchandize, or commodities whatever, contrary to the provisions of this act, all and every person or persons, being a member or members of said corporation, who shall have given any order or direction for so dealing or trading, and all and every person or persons, being a member or members as aforesaid, who shall have been concerned as parties therein, shall forfeit and lose treble the value of the goods, wares, or commodities in which such dealing shall have been made, one half thereof to the use of the informer, and the other half thereof to the use of the state, to be recovered with costs of suit.

Bills not issue for less than one dollar.

SEC. 11. *And be it further enacted*, That the said president and directors shall not in any case issue any notes for a smaller sum than one dollar.

Notes negotiable only at bank, when so stated on its face.

SEC. 12. *And be it further enacted*, That no note shall be negotiable at the said bank, unless it be so expressed on the face of the note.

Stockholders liable for debts of the bank.

SEC. 13. *And be it further enacted*, That the stockholders shall be liable for all notes issued or debts owing by said bank, in their individual characters, to the amount of their stock therein respectively.

Debts due the bank, how collected.

SEC. 14. *And be it further enacted*, That if any person or persons shall be indebted to said corporation, as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at said bank, and shall delay payment thereof, it shall be lawful for the president of the bank, or of any branch, as the case may require, after having given thirty days notice thereof, to move the circuit court of the county where said bank is established, or of the county where the branch may be, as the case may require, on producing to said court before whom the motion is made, the certificate of the president of the bank, or of the branch, (as the case may be,) that the debt is really and *bona fide* the property of the bank, for judgment.

SEC. 15. *And be it further enacted*, That the bills or notes of said corporation, originally made payable, or which shall become payable on demand, in gold or silver coin, shall be receivable in all payments to the state of Alabama, and the public moneys shall be therein deposited whenever lying inactive, so long as said bank continues to pay specie for its notes.

Notes of bank receivable in payment of debts to the state.

SEC. 16. *And be it further enacted*, That the state shall be, and hereby is vested with full power and authority to purchase all the shares or stock owned by any individual, body corporate, or copartnership, after ten years from the time at which the bank shall have gone into operation. And should the state make such purchase, it shall give the value and selling price at which such stock may be worth at the time of such purchase; but in no case shall give more than twelve and one half per centum above par; and in the event of the state making such purchase, it shall be the duty of the several stockholders to transfer and assign over all stock owned by them.

State may purchase the whole of the stock after ten years.

SEC. 17. *And be it further enacted*, That the state shall have the right, at all times hereafter, of making such alterations and amendments to this act, as may be deemed essential to the proper government and well-being of said bank.

General assembly may amend this act.

SEC. 18. *And be it further enacted*, That this act shall commence and be in force from and after the passage thereof.

CHAPTER IX.

Extracts from an Act to amend an Act entitled "An Act to provide for assessing and collecting of Taxes, and for taking the Census of this State," passed at the second session of the General Assembly, on the 22d day of December, 1820, and for other purposes.—*Passed June 18, 1821.*

SEC. 15. *And be it further enacted*, That subscriptions shall be opened at the several places mentioned in the act to incorporate the subscribers to the bank of the state of Alabama, whenever the superintendents appointed at Cahawba may direct, until the sum of one hundred thousand dollars or more shall be paid in gold or silver.

Bank, subscription to.

SEC. 16. *And be it further enacted*, That the subscribers to said bank shall pay one-fourth of the amount subscribed at the time of subscribing, one-eighth within sixty days thereafter, and one-eighth within one hundred and twenty days from the time of subscribing, and the residue when required by the board of directors of said bank upon thirty days notice.

Stock payable, when.

SEC. 17. *And be it further enacted*, That John Taylor, (late of Pendleton) Anderson Crenshaw, Henry Hitchcock, Edmund Lane, John Scott, James L. Seabury, Silas Dinsmoor, and John M'Kinley, are appointed commissioners, who, or a majority of them, shall have full power and authority to receive proposals from the directors of the several incorporated banks in this state, of the terms and conditions upon which said several banks will become branches of the bank of the state of Alabama; and it shall be the duty of the said commissioners, or a majority of them, to reduce to writing such terms as may be agreed upon between them and the directors of said several

Commissioners.

Banks can become branches.

banks, and cause the same to be signed by the directors, and report the same to the next general assembly.

Money to be paid in.

SEC. 21. *And be it further enacted*, That no bank bills shall be received in the treasury of this state, from the tax collectors thereof, but such as are required by law to be collected from the people in the payment of taxes.*

CHAPTER X.

An Act in relation to the Banking Institutions of this State.—*Passed December* 17, 1821.

Bank notes when not receivable.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the fifteenth day of February, one thousand eight hundred and twenty-two, no bill or note of any bank whatsoever, shall be receivable at the treasury of this state in payment of taxes, nor be receivable in payment of fines and forfeitures, which may accrue to the state or to the counties respectively, unless at the time of making such payments, the bank whose bills or notes are so offered in payment, is in the regular course of redeeming its notes and bills with specie, according to their nominal value.

How presented.

SEC. 2. *And be it further enacted*, That the bearer of any bill or note issued by any incorporated bank within this state, may at any time present such bill or note at such bank for payment, and in case of failure or refusal to make payment, according to the tenor and effect of said bill or note, it shall be lawful for such bearer, by himself, his agent, or attorney, to move the circuit or county court, of the county where such bank is situated for judgment against said bank; whereupon the said court shall without delay render judgment and award execution for the amount expressed in said bill or bills, note or notes, with legal interest from the time of the demand of payment, and until finally paid, or the amount of such judgment be made by due course of law, and costs of suit: *Provided*, that notice of such intended motion be served on the president or cashier, or person acting as cashier of said bank, ten days previous to the hearing of such motion, which notice shall be served by the sheriff of the county, who shall make a regular return of the same: *And provided*, that the plaintiff prove such presentment of the bill or note, and the failure or refusal of payment, or in lieu of such testimony, produce the protest of a notary public showing these facts: *And provided also*, that if the said bank may wish to make defence, and contest the plaintiff's motion, the court shall instantly empannel a jury to try the issue, and therein give judgment accordingly. All motions under this act shall be tried the first term, having preference of all other causes.

Proviso. Notices, how served.

Holders of notes to prove, &c.

Banks may defend.

Cause, how determined.

SEC. 3. *And be it further enacted*, That if any incorporated bank within this state, shall not at the expiration of six months after the passage of this act, make regular specie payments for any of the bills or notes it may have issued, the governor of the state shall give information of the fact to the solicitor of the circuit in which the bank may be situated, directing him forthwith to proceed against the said bank on a writ of *quo warranto*, requiring it to show cause why its corporate powers, privileges, and immunities, should not be adjudged to be forfeited, and the said bank dissolved. And that the court determining the case, shall have power to adjudge and decree concerning the same, according to law and usage, and to declare the charter of such bank forfeited; and also to make such orders consequent thereupon, in relation to the estate and effects, rights and credits of such bank, as shall secure the rights of all concerned. And that the governor associate with the solicitor such other counsel as he may deem proper.

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* This act for the most part appears to be superseded by the act for assessing and collecting taxes. *Passed December* 17, 1821.

When governor may direct solicitor to proceed on *quo warranto*.

Delinquent banks, effects, how disposed of.

SEC. 4. *And be it further enacted*, That all acts and laws repugnant to this act, be, and the same are hereby repealed.

Repeal.

CHAPTER XI.

An Act for the Relief of the Huntsville Bank.—*Passed December* 24, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That by the solemn pledge of the directors of the Planters' and Merchants' Bank of Huntsville, to the Legislature and the country, that this bank will in the course of the ensuing year, eighteen hundred and twenty-three, resume specie payments with ability to meet all its engagements, the further prosecution of the writ of *quo warranto* against said bank shall be stayed and suspended until the first day of March next; and if on or before said day a majority of the stockholders, both in number and scale of voting as prescribed by the charter of said bank, and also a majority of the directors to be elected for the ensuing year, together with the president of the board, shall renew the pledge and assurance to resume specie payments, and to continue the same with ability to meet all its engagements within the year eighteen hundred and twenty-three: *And provided*, the said president and directors, or a majority of them, shall, when called on to do the same, execute a bond or obligation with good and sufficient security in double the amount of the revenue assessed within their respective counties, to each and every Collector of the Revenue for the following counties, to wit: Jackson, Decatur, Madison, Limestone, Lauderdale, Franklin, Marion, Lawrence, Morgan, Blount, and St. Clair, conditioned that they the said president and directors, will well and truly redeem with specie, or the notes of specie-paying banks, which are receivable in the Land Offices in this state, all the notes of the bank aforesaid on demand, at their banking-house, on or before the tenth day of November next, which the said collectors may receive in payment of taxes at par, within the said counties, they, the said collectors, being

Quo warranto suspended under certain restrictions.

Proviso. President and directors to execute bonds.

In certain events assent to amendment of their charter, and transmit to the governor, &c. a copy of such assent.

Proviso.

required to make oath to the same; or that the said bank shall resume specie payments generally, on or before the day and date above written, in either of which events, the obligation of the said president and directors shall be void; and shall also assent and agree to the modification or amendment to the charter of said bank, contained in the second section of this act; which pledge and assent shall be signed by the president, directors, and stockholders, or a majority of each, and transmitted to the governor of this state, and a copy thereof to the solicitor of the District in which the writ is pending; then and in that case, the proceedings on said writ shall remain suspended until the first day of January, eighteen hundred and twenty-four: *Provided*, That nothing in this act contained shall be so construed as to authorize the bills of said bank to be received into the Treasury, until it shall resume specie payments generally; after which resumption of specie payments, said notes shall be receivable as the notes of other specie-paying banks of this state.

Without consent of the general assembly after a time specified, charter forfeited.

Governor on failure, to proclaim charter void.

SEC. 2. *And be it further enacted*, That if at any time after the first day of January, eighteen hundred and twenty-four, the said bank shall fail or refuse to pay specie for any note or notes it may have issued, without the consent of the General Assembly of this state first obtained, authorizing the suspension of specie payment, then and in that case, the charter of said bank shall be forfeited; and if at any time subsequent to the first day of January, eighteen hundred and twenty-four, the governor shall ascertain, by note regularly protested for non-payment, that said bank had refused to pay specie for any note it has issued, or may issue, then and in that event, he is hereby authorized and required to issue his proclamation, declaring the said charter void.

Preceding section part of the charter in event.

SEC. 3. *And be it further enacted*, That the preceding section shall be taken and considered as a part of the charter of said bank, so soon as the assent of a majority of the stockholders, both in number and scale of voting as prescribed by the charter, and of the directors and president, shall be transmitted to the governor of this state, herein before provided.

BASTARDY.—1811.

CHAPTER I.

An Act concerning Bastardy.—*Passed December* 13, 1811.

Pregnant single women to complain to justices of the peace.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That when any single woman, who shall be pregnant, or delivered of a child, which by law would be deemed and held a bastard, shall make complaint to any one or more justices of the peace, for the county where she may be so pregnant or delivered, as aforesaid, and shall accuse any one of being the father of such child, it shall be the duty of such justice or justices, to issue process to the sheriff or coroner, or any constable of such county, against the person so accused, as aforesaid, and cause him to be brought forthwith before him.

Examination before magistrates.

Sec. 2. *And be it further enacted*, That upon his appearance, it shall be the duty of the said justice or justices, to examine the said female, in the presence of the man alleged to be the father of the child, touching the charge against him, and if said justice or justices shall be of opinion, that sufficient cause appears, it shall be his or their duty to bind the said person, so accused, in bond, with good and sufficient security, to be and appear before the next county court, to be holden for said county, and in the mean time to be of good behaviour.

Issue to be tried by a jury.

Sec. 3. *And be it further enacted*, That the county court aforesaid, at their said next term, shall have full and complete cognizance and jurisdiction of said charge of bastardy. And the court shall cause an issue to be made up, "whether the reputed father is the real father of the child, or not;" which issue shall be tried by a jury: *Provided nevertheless*, That the inquiry shall not be *ex parte*, but the imputed father shall have a right to appear by himself or counsel, and controvert, by all legal evidence, the charge alleged against him.

Judgment against the defendant, not to exceed fifty dollars.

Sec. 4. *And be it further enacted*, That if the issue is found against the defendant, or imputed father, then he shall be condemned by the judgment of said court, to pay, not exceeding fifty dollars, at the discretion of said court, yearly for ten years, towards the support, maintenance, and education of said child; and the said imputed father shall give bond and security, for the due and faithful payment of said sum of money, which shall be made payable to the said court, and laid out, and appropriated under their special order and direction, from time to time made, so that the same be not paid to the mother of said child; which said bond shall be, and hereby is declared to have the same force, validity, and effect, as a judgment of said court, upon which executions may issue, as often as money thereon shall become due and payable: *Provided however*, That if said child should never be born alive, or being born, should die at any time, and that fact, suggested upon the record of the county court, that then and from that time, the bond aforesaid shall be void.

Proviso.

The issue if against the woman, &c.

Sec. 5. *And be it further enacted*, That if upon the trial of the issue aforesaid, it shall be found by the jury against the woman, or that the child imputed is not the child of the pretended father, then the judgment of the court shall be, that he be discharged hence, and that the woman making the complaint shall pay all costs occasioned thereby.

In case of intermarriage of the parties.

Sec. 6. *And be it further enacted*, That if the mother of said child and the imputed father shall at any time after its birth intermarry, that the said child shall in all respects be deemed and held legitimate, conformably to the maxim of the civil law, and the bond aforesaid be void.

Guardians to be appointed by the court.

Sec. 7. *And be it further enacted*, That it shall be the duty of the court to appoint a guardian or guardians to said child, to whom, upon his or her entering into good and sufficient security, for the faithful performance of his or her duty, the money shall be paid over by the court: *Provided*,* That in all cases, the reputed father of the child shall have a preference to any other person, in becoming guardian, as aforesaid.

Repealing clause.

Sec. 8. *And be it further enacted*, That all acts, or parts of acts, coming within the purview, and conflicting with the provisions of this act, shall be, and the same are hereby repealed.

CHAPTER II.

An Act to amend the act, entitled, "An Act concerning Bastardy."—*Passed December* 7, 1816.

Jury to be empannelled by the court.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That hereafter whenever a case of bastardy shall be returned to the county court, under the authority of the act to which this is an amendment, the said county court shall have power and authority to cause to be summoned and empannelled a jury, in the same manner as tales jurors are summoned, for the purpose of trying the issue of bastardy, if the defendant, or reputed father, shall demand the same, any thing in the act, entitled "An Act to create a Supreme Court, and establish a Court of Errors and Appeals," to the contrary notwithstanding.

Reputed father not to be appointed guardian.

Sec. 3. *And be it further enacted*, That so much of the seventh section of the act to which this is an amendment, as authorizes and requires the court to select and appoint the reputed father guardian to such child, be, and the same is hereby repealed.

CHAPTER III.

An Act, to change the name of, and legitimate a certain person therein named.—*Passed December* 5, 1822.

Note.—This act provides for changing the name of Thomas Paine Dameron, to that of Thomas Paine Rountree; and further provides, that the said Thomas Paine, being the natural child of Chesney B. Rountree, be legitimated.

BILLS OF EXCHANGE AND PROMISSORY NOTES.—1807.

CHAPTER I.

An Act to render Promissory Notes and Cotton Receipts negotiable, and for other purposes.—*Passed in* 1807.

[Note.—The leading provisions of this law were adopted by the governor and judges in October, 1800. It was introduced with some modifications, founded on subsequent acts of the general assembly in the digest of 1807. The first section is founded on the English act of parliament, of the third and fourth of

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* Repealed in the next act.

Ann, chapter 9. It was repealed Dec. 18, 1812, but a knowledge of it seems so important to an accurate understanding of the law on the subject of bills of exchange and promissory-notes, as it now actually stands, that it was deemed expedient to insert the whole, with the notification that the 1st section has been repealed.]

Promissory notes, and cotton receipts, how negotiable.

[SEC. 1. *Be it enacted by the Legislative Council, and House of Representatives of the Mississippi Territory, in general assembly convened,* That all Notes signed by any person or persons, body politic or corporate, or by the servant or agent of any corporation, banker, merchant, or trader, who is, or shall be usually intrusted to sign such promissory notes for them, whereby such person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant, or trader, shall promise to pay any person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant, or trader, or order, or bearer, the money mentioned in such note, shall be construed to be, by virtue thereof, due and payable to such person or persons, body politic or corporate, or the agent or servant of any corporation, banker, merchant, or trader, to whom the same is made payable; and also such note payable to such person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant or trader, or order, or bearer, may be assignable over in like manner as inland bills of exchange are by custom of merchants in England. And the person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant, or trader, to whom such money is or shall be payable, may maintain an action for the same, as they might upon such bill of exchange. And the person or persons, body politic or corporate, or the servant or agent of any corporation, banker, merchant, or trader, to whom such note, so payable to order or bearer, is assigned or endorsed, may maintain an action against the person or persons, body politic, or corporation, or the servant or agent of any corporation, banker, merchant, or trader, who signed, or shall sign such note, or any who shall or have endorsed the same, as in cases of inland bills of exchange, and recover damages and cost of suit: and in case of nonsuit, or a verdict shall pass against the plaintiff, the defendaat shall recover cost.]

Assignment of cotton receipts.

SEC. 2. *And be it further enacted,* That all such receipts as are or shall be assigned by the owner or owners of cotton-gins, or by the servant or agent of any owner or owners of cotton-gins, who is, or who shall be usually intrusted to sign such receipts, commonly called cotton receipts, whereby such owner or owners of cotton-gins, his, her, or their servant or agent, shall acknowledge to have received any quantity of cotton, the quantity of cotton mentioned in such receipt shall be construed to be by virtue thereof due, and payable to such person or persons of whom the same is acknowledged to have been received. And such cotton receipts, whereby any quantity of cotton is acknowledged to have been received of such person or persons, may be assignable over in like manner as promissory notes are by the foregoing section of this law. And the person or persons to whom such cotton receipt, whereby any quantity of cotton is acknowledged to have been received as aforesaid, is assigned or endorsed, may maintain an action against the owner or owners of any cotton-gin, his, her, or their servant or agent, who signed, or shall sign such cotton receipt, or any who shall or have endorsed the same, as in cases of promissory notes aforesaid, and recover damages and cost of suit.

Cotton receipts, how recoverable.

SEC. 3. *And be it further enacted*, That all cotton receipts given by gin holders, in which no time of payment or delivery of the cotton therein mentioned is expressed or limited, shall be taken and construed to be payable or deliverable within four months from the date or delivery of such receipts: and on the non-payment or non-delivery of any cotton specified in any receipt, expressing the time of payment or delivery thereof, at the time so expressed: or on the non-payment or on the non-delivery of any cotton specified in any receipt not expressing the time of payment or delivery thereof, at the expiration of the said four months, the legal holder or holders of such cotton receipts, shall, in either case after lawful demand made, be entitled to recover twenty per centum damages, on the value of the cotton specified in such receipt, to be recoverable with cost of suit: *Provided*, That if any owner of a gin shall delivei the full amount of any cotton due on any such receipts within fifteen days after lawful demand shall have been made by the legal holder of such cotton receipt or by his agent: *And provided also*, That when from default of the owner or holder of the said receipts, the necessary bagging and cordage have not been duly supplied, then in either case, such owner of a gin shall not be liable to pay any damages whatsoever, any thing to the contrary contained in this act notwithstanding.

Orders for the payment of money.

SEC. 4. *And be it further enacted*, That when any person or persons shall, by order in writing, signed by his or her proper hand, direct the payment of any sum or sums of money, in the hands or possession of any other person or persons whatsoever, the money therein specified shall, by virtue thereof, be due and payable to such person or persons to whom the same is drawn payable, and may be put in suit against the person or persons who may draw the same, or against the person or persons on whom the same shall be drawn (after acceptance thereof) by him or them, to whom the same shall be made payable, and recover damages: *Provided nevertheless*, That no person or persons whatsoever, shall prosecute any suit against any person or persons who shall give such order for the money herein mentioned, before the same shall have been presented for acceptance, and notice given of the non-acceptance thereof to the drawer; or before the same shall have first been protested or non-accepted, and notice given thereof to the drawer before such suit shall be brought: and if any suit shall be brought on any such order before notice and refusal to pay as aforesaid, the plaintiff or plaintiffs shall be non-suited and pay cost.

Notice of non-acceptance.

SEC. 5. *And be it further enacted*, That all bills of exchange hereafter drawn upon any person resident within the United

States and out of this territory, which shall be returned protested, the damages of such protested bills shall be fifteen* per cent. on the sum drawn for; and all bills in like manner drawn upon persons resident out of the jurisdiction of the United States, being protested, the damages shall be twenty per cent. on the sum mentioned in the said bills respectively; and all charges incidental thereto, with lawful interest as aforesaid, until the same be paid.

Damages on protested bills.

SEC. 6. *And be it further enacted*, That every bill of exchange, of the sum of twenty dollars and upwards, hereafter drawn in, or dated at, and from any place in this territory, upon any person or persons within the said territory, and payable at a certain number of days, weeks, or months, after date or sight thereof, shall, in case of non-acceptance by the drawee, when presented for acceptance; or if accepted, in case of non-payment by the drawee, when due and presented for payment, be protested by a notary public, in like manner as foreign bills of exchange, and the damages on such bill shall be ten per cent. on the sum drawn for, and shall in every other respect be regulated and governed by the same laws, customs, and usages, which regulate and govern foreign bills of exchange. *Provided*, that such protests shall, for want or in default of a notary public, be made by any justice of the peace, whose act in such case shall have the same effect as if done by a notary public.

CHAPTER II.

An Act concerning the assignment of Bonds, Notes, &c. and for other purposes.
Passed December 18, 1812.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That all bonds, obligations, bills single, promissory notes, and all other writings for the payment of money, or any other thing, shall and may be hereafter assigned by endorsement, whether the same be made payable to the order or assigns of the obligee or payee, or not; and that the assignee shall and may sue in his own name, and maintain any action which the obligee or payee might or could have sued or maintained thereon previous to assignment, and that in all actions to be commenced and sued upon any such assigned bond, obligation, bill single, promissory note, or other writing as aforesaid, the defendant shall be allowed the benefit of all payments, discounts, and sets-off, made, had, or possessed against the same previous to notice of the assignment, any law, usage, or custom, in any wise to the contrary notwithstanding, in the same manner as if the same had been sued and prosecuted by the obligee or payee therein, and the person or persons to whom such instruments so payable is assigned, may maintain an action against the person or persons who shall have endorsed the same, as in cases of inland bills of exchange.

Assignment of bonds, &c.

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* See the next chapter.

Acts repealed.

SEC. 2. *And be it further enacted*, That an act, entitled "An Act to enable Assignees of Bonds, Bills, or Notes, to bring actions for the recovery of the same in their own names, and for other purposes," and also such parts of an act, entitled "An Act to render Promissory Notes, and Cotton Receipts negotiable, and for other purposes," as in any wise concerns promissory notes, be, and the same are hereby repealed.

Courts to enter judgment.

SEC. 3. *And be it further enacted*, That in all actions founded on any writing ascertaining the plaintiff's demand, or sum sued for, if judgment by default, *nihil dicit*, or by *non sum informatus*, or on demurrer, be entered therein, the court where the same action shall be pending, shall and may lawfully enter judgment for the debt or demand, and interest thereon, to be calculated by the clerk of such court, up to the time of rendering judgment, without the intervention of a jury, to inquire of the damages, and award execution thereon, as in other cases.

Suits not to be abated.

SEC. 4. *And be it further enacted*, That where any person or persons shall institute any suit in the name of any other person or persons, for his or their own use and benefit, that the death of such person or persons in whose name or names the suit or suits are instituted, shall not abate such suit, but the same shall progress, and be tried in the same manner as though such suit was actually brought in the name of the person or persons for whose use the same was instituted.

Damages for nonpayment of bills of exchange, &c.

SEC. 5. *And be it further enacted*, That hereafter on inland bills of exchange, on persons without the limits of this territory, the damages on protest for non-payment shall be ten per cent. besides legal interest, from and after the date of such protest, any thing contained in the fifth section of the act to render promissory notes and cotton receipts negotiable, and for other purposes, to the contrary notwithstanding.

NOTE 1st. The Act "to enable Assignees of Bonds, Bills, &c. to bring Actions," and repealed in the second section of the foregoing act, was passed on the first of March, 1808. It provided the Assignees of Bonds, Notes, and Bills, might recover the same in their own names, styling themselves assignees, or payees; but that the defendant should not be precluded from the benefit of any discounts or defence to which he would have been entitled previous to the assignment, had the action been brought by the original obligee or payee.

The 2d section provided that in actions commenced on any Bond, Bill, or Note, the writ should issue against all the obligors or payors, but that the plaintiff might declare and proceed to judgment against such of them as should be arrested.

The 3d section provided, that when any person brought a suit in the name of any other person, for his own use or benefit, the death of the person in whose name the suit was instituted, should not abate such suit.

NOTE 2d. An Act regulating Judicial Proceedings, which will be found under title 36. "Judicial Proceedings at Common Law," provides, that when any suit shall be commenced, founded on any writing, whether the same shall be under seal or not, the court shall receive such writing as evidence of the debt or debts for which it was given, and that the defendant shall not deny the same, unless it be by plea supported by his affidavit, filed with the plea, at the time such plea is filed.

NOTE 3d. In an Act passed in December, 1819, regulating Judicial Proceedings, Sec. 37, it is enacted (as will be found under title "Inferior Courts," chapter 8.)

CHAPTER III.

An Act to restrain the issuing of Small Notes, commonly called Change Bills. *Passed November* 17, 1818.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That all notes or bills for a sum not exceeding one dollar, drawn by any individual or private copartnership, or association, or corporate body, (except regularly chartered banks) and made payable to any person, or order, or bearer, or simply expressing a sum due, shall be deemed and taken to bear interest at the rate of one hundred per centum per annum, calculating the said interest from the date of such notes or bills as may be hereafter issued, and from the time of presentment for payment of such as have been issued before the passage of this act.

Certain bills to bear interest at the rate of 100 per ct.

CHAPTER IV.

An Act to authorize the issuing of Treasury Notes, &c.—*Passed December* 19, 1821.

Note.—The body of this Act will be found under title 61. "Treasury Department."

Sec. 8. *And be it further enacted,* That from and after the passage of this act, it shall be unlawful for any person or persons within the limits of this state, to make, issue, or emit, any printed note or bill, such as are generally known and denominated change, or due bills, or cause, or procure to be made, issued, or emitted, any printed note or bill purporting to be a due bill, and generally known as, and denominated change or due bills, under the penal sum of five dollars for each and every offence, to be recovered on a warrant before any justice of the peace, by any person suing for the same, one moiety to the use of such person, and the other to the use of the state.

Unlawful to issue change bills.

Penalty.

Sec. 9. *And be it further enacted,* That from and after the first day of June next, it shall be unlawful for any person or persons, within the limits of this state, to pass or circulate, or cause to be passed or circulated, any printed bill or note purporting to be a due bill, and such as are generally known as, and denominated change or due bills, whether made, issued, or emitted, in or out of this state, under the penal sum of five dollars for each and every offence, to be recovered by warrant before any justice of the peace, by any person suing for the same, one moiety to the use of such person, and the other to the use of the state: *Provided nevertheless,* that this act shall not prevent any person or persons from delivering over to the persons who may have issued, made, or emitted any printed change or due bills, and which he or they may have on hand, after the said first day of June next.

Unlawful to pass change bills after 1st of June.

Penalty.

Proviso.

BOATS.—1807.

CHAPTER I.

Extracts from "An Act to prevent trespasses in certain cases, &c.—*Passed in* 1807.

Taking away of boat or vessel.

SEC. 6. *And be it further enacted*, That every person, who without leave of the owner, or other person having the same in care or charge, shall take away any boat or vessel, shall for every such offence pay ten dollars to the owner thereof; over and above the damages such boat or other vessel shall sustain; and over and above the expense of bringing back such boat or vessel; to be recovered as aforesaid, with costs, in any court of record.

And where there shall be several offenders in one trespass, every person shall be liable for the whole penalty.

NOTE.—Regulations respecting "Ferry Boats," will be found under title 33, "Highways, Bridges, and Ferries." Those relative to Pilot Boats, under title 63, "Trade and Commerce."

CHAPTER II.

An Act to incorporate the St. Stephens Steam-Boat Company.—*Passed February* 10, 1818.

Persons incorporated, and their powers.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That James Pickens, David Files, Silas Dinsmoor, Henry Bright, Benjamin S. Smoot, Daniel B. Ripley, and their associates, be and they are hereby constituted and appointed a body corporate, by the name and style of the St. Stephens Steam-Boat Company; and by that name shall be, and they are hereby made able and capable in law, to have, purchase, receive, possess, enjoy, and retain to them and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects, of whatever kind, nature, and quality; and the same to sell, grant, demise, alien, and dispose of; to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended in any suit, action, matter, or thing depending in any court of law or equity; and also, to make, have, and use a common seal, and the same to break, alter, and renew at their pleasure; and also, to ordain, establish, and put in execution, such by-laws, ordinances, and regulations as they shall deem necessary and convenient for the government of the said corporation, not being contrary to the constitution thereof, or the laws of the United States, or the territory; and generally to do and execute all and singular the acts, matters, and things, which to them may appear necessary, or which to them it may appertain to do, as incident to bodies corporate, under the restrictions above mentioned.

Establish and put in execution by-laws.

CHAPTER III.

An Act to incorporate the Steam-Boat Company of Alabama.—*Passed November* 28, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Francis B. Stockton, Francis W. Armstrong, James L. Seabury, Nicholas Pope, and Jonathan Woodward, and such others as have, or shall be hereafter associated with them, be, and they are hereby constituted and appointed a body corporate, by the name and title of the Steam-Boat Company of Alabama, for the term of ten years from and after the passage of this act; and by that name shall be, and they are hereby made able, and capable in law, to have, purchase, receive, and possess, enjoy and retain to them and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects of whatever kind, nature, and quality, and the same to sell, grant, demise, alien, and dispose of, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all manner of actions, suits, matters, and things depending in any court of law or equity; and also to make, have, and use a common seal, and the same to break, alter, and renew at their pleasure: *Provided always*, that it shall not be lawful for the said corporation to use any part of its capital stock or funds, for banking purposes; nor to emit for circulation any notes or bills, or make any contracts for the payment of money, except only under the seal of the said corporation; and all such notes and contracts shall, to all intents and purposes, be taken to operate as specialties at law.

Members of corporation.

Style.

Corporate powers.

Corporation not to issue notes.

SEC. 2. *And be it further enacted,* That the capital stock of the said corporation, created by this act, shall not exceed the sum of one hundred and eighty-two thousand dollars.

Stock limited.

SEC. 3. *And be it further enacted,* That the affairs of the said Steam-Boat Company of Alabama, shall be managed and conducted for the present by five directors, who shall be stockholders in said company, and resident within this state, and who shall hold their offices for one year from the date of the passage of this act, and until there shall be a new election of directors, in pursuance of the provisions of this act, and the said first five directors shall be, Francis B. Stockton, Francis W. Armstrong, James L. Seabury, Nicholas Pope, and Jonathan Woodward, out of which number, the said directors, at their first meeting, shall appoint their president, and a majority of said directors shall constitute a quorum to transact business.

Directors.

Quorum.

SEC. 4. *And be it further enacted,* That after the time limited by this act, for the continuance in office of the directors hereby nominated and appointed, the stock, affairs, and concerns of the said corporation shall be managed and conducted by a board of directors, which shall consist of five stockhold-

Directors to be elected.

ers, residents of the state, who shall be elected on the first Monday in February, in each and every year thereafter, at such time of the day, and at such place in the town of Blakeley, or such other town or place in the state, as may be determined on by a majority of the stockholders of said company, and under such regulations as the board of directors for the time being shall appoint and direct; and they shall hold their offices for one year, and until others shall be chosen to supply their places, and no longer; and notice of such intended election shall be published for at least three successive weeks next preceding the same, in two of the public newspapers printed in this state; and every such election shall be made by ballot, by a plurality of the votes of the stockholders present, allowing one vote for every share; *Provided*, That in case it should at any time happen, that an election of directors should not be made, the said corporation for that cause shall not be deemed to be dissolved, but that it shall and may be lawful on any other day to hold an election of directors, in such manner as shall have been regulated by the by-laws and ordinances of the said corporation: *Provided also*, That at all elections to be holden by the stockholders under this act, they may vote by proxy.

Proviso.

CHAPTER IV.

An Act to incorporate the Mobile Steam-Boat Company.—*Passed November 27, 1821.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That John B. Hogan, Stephen Chandler, Lewis Judson, Henry Gunnison, William Raser, and Benjamin Vincent, and such others as have or shall be hereafter associated with them, be, and they are hereby constituted and appointed a body corporate, by the name, title, and style of "The Mobile Steam-Boat Company," for the term of thirty years, from and after the passage of this act; and by that name shall be, and they are hereby made able and capable in law, to have, purchase, receive, possess, enjoy, and retain, to them and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects, of whatever kind, nature, or quality; and the same to sell, grant, demise, alien, and dispose of; to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all manner of actions, suits, matters, and things, in any court of law or equity; and also to make, have, and use a common seal, and the same to break, alter, and renew at their pleasure: *Provided always*, That it shall not be lawful for the said corporation to use any part of its capital stock or funds for banking purposes, nor to emit for circulation any notes or bills, or make any contracts for the payment of money, except only under the seal of the said corporation; and all such notes and contracts shall, to all intents and purposes, be taken to operate as specialties at law.

Style.

Term of incorporation.

Provsio.

Capital stock.

SEC. 2. *And be it further enacted*, That the capital stock of the said corporation, created by this act, shall not exceed the sum of two hundred thousand dollars.

Sec. 3. *And be it further enacted,* That the affairs of the said steam-boat company, shall be managed and conducted by five directors, who shall be stockholders in said company, and resident within this state, and who shall hold their offices for one year from the first day of January next, and until there shall be a new election of directors, in pursuance of the provisions of this act.

Company managed by five directors.

Term of office.

SEC. 4. *And be it further enacted,* That the stock affairs and concerns of the said corporation, shall be managed and conducted by the said directors, to be chosen or elected on the third Monday in December, in each and every year from and after the passage of this act, by the stockholders, at such place in the city of Mobile, or such other city, town, or place in this state, and under such regulations as a majority of the stockholders may determine upon and prescribe;* and they shall hold their offices for the term, and in the manner herein before prescribed; and notice of such intended election shall be published for at least three successive weeks next preceding the same, in the newspaper printed and published in Mobile; and every such election shall be made by ballot, by a plurality of votes of the stockholders present, allowing one vote for every share: *Provided,* That in case it should at any time happen, that an election of directors should not be made, the said corporation for this cause shall not be deemed to be dissolved; but that it shall and may be lawful on any other day, to hold an election of directors in such manner as shall have been or may be regulated by the by-laws and ordinances of the said corporation: *Provided also,* That at all elections to be holden by the stockholders under this act, they may vote by proxy.

Directors when chosen.

Notice of their election to be published.

Proviso.

Proviso.

CHAPTER V.

Extracts from an Act declaring the Conecuh and Sepulgah Rivers Public Highways, and for other purposes.—*Passed December* 13, 1821.

SEC. 2. *And be it further enacted,* That Henry Gunnison, Thomas L. Hallet, Thomas Richardson, Elias Pledger, and their associates, are hereby constituted and appointed a body corporate, by the name and style of "The Navigation Steam-Boat Company;" and they are hereby vested with all the rights and privileges, and subject to the same restrictions, which are granted and imposed in an act to incorporate the Mobile Steam-Boat Company, passed on the twenty-seventh day of November, one thousand eight hundred and twenty-one.

Company incorporated.

Corporate powers.

NOTE. Provisions relating to Ferry Boats will be found under title 33, "Highways, Ferries, and Bridges."
Those relating to Pilot Boats under title 63, "Trade and Commerce."

BOUNDARIES OF THE STATE.—1798.

CHAPTER I.

Extract of an Act for an amicable Settlement of Limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory.—*Passed April* 7, 1798.

President authorized to appoint commissioners to adjust the interfering claims to certain territory,

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in congress assembled,* That the President of the United States be, and he is hereby authorized to appoint three commissioners, any two of whom shall have power to adjust and determine with such commissioners as may be appointed under the legislative authority of the State of Georgia, in all interfering claims under the United States, and that state, to territory situate west of the river Chatahoochee, north of the thirty-first degree of north latitude, and south of the cession made to the United States by South Carolina: and also to receive any proposals for the relinquishment or cession of the whole, or any part of the other territory claimed by the state of Georgia, and out of the ordinary jurisdiction thereof.

and to receive proposals for the cession of other territory claimed by Georgia.

Lands ascertained to be the property of the United States, how to be disposed of.

Sec. 2. *Be it further enacted,* That all the lands thus ascertained as the property of the United States, shall be disposed of in such manner as shall be hereafter directed by law; and the net proceeds thereof shall be applied to the sinking and discharging the public debt of the United States, in the same manner as the proceeds of the other public lands in the territory northwest of the river Ohio.

Certain territory constituted a district, to be called the Mississippi Territory.

Sec. 3. *And be it further enacted,* That all that tract of country, bounded on the west by the Mississippi, on the north by a line to be drawn due east from the mouth of the Yazoo to the Chatahoochee river; on the east by the river Chatahoochee; and on the south by the thirty-first degree of north latitude, shall be, and hereby is constituted one district, to be called the Mississippi Territory: and the President of the United States is hereby authorized to establish therein a government in all respects similar to that now exercised in the territory northwest of the river Ohio, excepting and excluding the last article of the ordinance made for the government thereof, by the late Congress, on the thirteenth day of July, one thousand seven hundred and eighty-seven.

President authorized to establish a government, and appoint officers therein

CHAPTER II.

Extract from Articles of Agreement and Cession entered into on the 14th day of April, one thousand eight hundred and two, between the Commissioners appointed on the part of the United States, by virtue of an act, entitled "An Act for an amicable Settlement of Limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory," and of the act supplemental to the last-mentioned act on one part; and the commissioners appointed on the part of the state of Georgia, by virtue of an act, entitled "An Act to carry the twenty-third Section of the First Article of the Constitution into effect," and of the act to amend the last-mentioned act, on the other part.

ARTICLE I.

The state of Georgia cedes to the United States all the right, title, and claim which the said state has to the jurisdiction and soil of the lands situated within the boundaries of the United States south of the state of Tennessee, and west of a line beginning on the western bank of the Chatahoochee river, where the same crossed the boundary line between the United States and Spain, running thence up the said river Chatahoochee, and along the western bank thereof, next above the place where a certain creek or river called "Uchee" (being the first considerable stream on the western side above the Cussetas and Coweta towns,) empties into the said Chatahoochee river; thence in a direct line to Nickajack, on the Tennessee river; then crossing the said last-mentioned river, and thence running up the said Tennessee river, and along the western bank thereof, to the southern boundary line of the state of Tennessee.

CHAPTER III.

Extract from an Act of the Congress of the United States, entitled "An Act supplementary to the Act, entitled 'An Act regulating the Grants of Land, and providing for the disposal of the Lands of the United States south of the State of Tennessee.'"—*Passed March* 27, 1804.

Sec. 7. *And be it further enacted*, That the tract of country lying north of the Mississippi Territory, and south of the state of Tennessee, and bounded on the east by the state of Georgia, and on the west by the state of Louisiana, shall be, and the same is hereby annexed to, and made a part of the Mississippi Territory.

CHAPTER IV.

An Act to enlarge the Boundaries of the Mississippi Territory.—*Passed by Congress, May* 14, 1812.

All that portion of territory lying east of Pearl river, west of the Perdido, and south of the thirty-first degree of latitude, shall be, and the same is hereby annexed to the Mississippi Territory; to be governed by the laws now in force therein, or which may hereafter be enacted; and the laws and ordinances of the United States relative thereto, in like manner as if the same had originally formed a part of said territory; and until otherwise provided by law, the inhabitants of the said district hereby annexed to the Mississippi Territory, shall be entitled to one representative in the general assembly thereof.

CHAPTER V.

Extract of an Act to establish a separate Territorial Government for the Eastern part of the Mississippi Territory.—*Passed March* 3, 1817.

Be it enacted by the Senate and House of Representatives of the United States of America, in congress assembled, That all that part of the Mississippi Territory which lies within the following boundaries, to wit: beginning at the point where the line of the thirty-first degree of north latitude intersects the Perdido river, thence east to the western boundary line of the state of Georgia, thence along said line to the southern boundary line of the state of Tennessee, thence west along said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the northwest corner of Washington county, thence due south to the Gulf of Mexico, thence eastwardly, including all the islands within six leagues of the shore, to the Perdido river, and thence up the same to the beginning, shall, for the purpose of a temporary government, constitute a separate territory, and be called "Alabama."

CHAPTER VI.

Resolutions relative to the Dividing Line between this State and the State of Georgia.—*Passed January* 1, 1823.

Preamble. *Whereas* the dividing line between this state and the state of Georgia, never having been run in conformity to the articles of agreement and cession entered into on the twenty-fourth day of April, eighteen hundred and two, between the commissioners of the state of Georgia on the one part, and the commissioners of the United States on the other part, from the mouth of Uchee creek on the Chatahoochee river, thence in a direct line to Nickajack on the Tennessee river; and as it is now in contemplation to hold a treaty for the acquisition of lands from the Indians, which must bound upon said line, and it is highly important to the two states, for various considerations, that the said line should no longer remain undefined by the present marks; and this Legislature being of the opinion, that said articles of agreement and cession render it obligatory on the United States, to cause said line to be run as early as possible.

Governor to present subject before president.

SEC. 1. *Be it resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the governor be requested to take as speedy measures as possible to present the subject to the President of the United States, and to bring the same before Congress if necessary, for the purpose of procuring said line to be run as early as possible.

SEC. 2. *And be it further resolved*, That there shall be appointed by a joint vote of both houses of the General Assembly, two Commissioners, one of whom shall be an artist, to accompany such person or persons as may be appointed on the part of the United States to run said line.

Commissioners to be appointed.

SEC. 3. *And be it further resolved*, That the Governor of this state communicate the above resolutions to the Executive of the state of Georgia, and solicit the concurrence of that state to the same.

CHAPTER VII.

Resolution, requesting the Governor to procure a correct Map of this State.—*Passed December* 31, 1822.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That the Governor be requested to procure for the use of the General Assembly of this state, of General Coffee, Surveyor General of the United States for the Alabama District, or from any other correct source in his power, a Map of this state, marking the county lines, principal watercourses, reads, principal towns, &c.

BOUNDARIES OF COUNTIES.

CHAPTER I.

PROCLAMATION BY WINTHROP SARGENT,

GOVERNOR OF THE MISSISSIPPI TERRITORY.

To all persons who shall see these presents, Greeting:

Whereas it has been directed by the sovereign authority of the United States, that for the due execution of process civil and criminal, within this territory, the governor shall make proper divisions thereof, and from time to time, as circumstances require, lay out the same into counties and townships subject to future alteration as may be directed; and it appearing to me that the divisions already made cannot extend to the inhabitants upon the Tombeckbee and other eastern settlements, equal administration of justice; I have thought proper therefore, to erect a new county, and by these letters made patent, do order and ordain, that all and singular the lands lying and being within the following, viz: The territorial boundaries upon the north, east, and south, and the Pearl river on the west, shall constitute the same, to be named and hereafter to be called the county of Washington. And unto the said county of Washington is hereby granted all and singular the jurisdictions, rights, liberties, privileges, and immunities to a county belonging and appertaining, and which any other county that is or may hereafter be erected and laid off, shall or ought to enjoy, conformably to the laws and ordinances of the United States, and of this territory.

In witness whereof I have hereunto set my hand, and caused the public seal to be affixed, this fourth day of June, *Anno Domini* one thousand eight hundred, and in the twenty-fourth year of the independence of the United States of America.

(Signed) WINTHROP SARGENT.

By his Excellency's command,

JOHN STEELE, *Secretary*.

CHAPTER II.

BY ROBERT WILLIAMS,

GOVERNOR OF THE MISSISSIPPI TERRITORY.

Whereas, by the ordinance for the government of this territory, it is provided that, for the prevention of crimes and injuries, and for the execution of process civil and criminal, the governor shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject however to such alterations as may thereafter be made by the legislature.

And whereas the Indian titles have been extinguished to a tract of country lying and being within this territory, principally on the north side of the Tennessee river, commonly called the "great bend" of Tennessee, and bounded as follows: beginning on the north bank of the Tennessee river, on the Cherokee boundary, thence northwardly along said boundary to the southern boundary of the state of Tennessee, thence west with said last-mentioned boundary, till it intersects the Chickesaw boundary line, thence southwardly along said Chickesaw line, crossing the Tennessee river twice, to the beginning; agreeably to a survey made under the authority of the United States, within which boundaries there are several thousand inhabitants, having as yet no laws or officers among them: and it being also provided by said ordinance, that the laws shall have force in all parts of the district: to the end therefore, that the inhabitants residing in the said tract of country may have the benefit of law:

I do, in compliance with the said ordinance and for the purposes aforesaid, lay out said tract of country, to be called and known by the name of "Madison," subject, however, to such alterations as may be hereafter made by the legislature.

Given under my hand and the seal of the territory, at the town of Washington, this thirteenth day of December, in the year of our Lord one thousand eight hundred and eight, and in the thirty-third year of the Independence of the United States.

(L. S.)

ROBERT WILLIAMS.

By the Governor,

THOMAS H. WILLIAMS, *Secretary*.

Secretary of State's Office.

I certify the foregoing to be a true copy taken from the records of my office.

Given under my hand at the town of Columbia, the second day of April, 1822.

JOHN H. GRIMBALL,
Secretary of State.

SUPPLEMENT TO CHAPTER II.

An Act to extend the Laws of this Territory to Madison County.—*Passed February* 27, 1809.

Whereas a county has lately been laid off by the governor of this territory, lying within the great bend of Tennessee river, by the name of Madison:

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the laws relating to the judiciary and militia of this territory, be immediately extended to the county of Madison. Madison.

NOTE.—The second, third, fourth, and fifth sections, may be considered as obsolete.

SEC. 6. *And be it further enacted,* That all the laws of a general nature which now exist, or hereafter may be passed, for the government of this territory, shall extend to, and be binding on the inhabitants of the county of Madison.

CHAPTER III.

An Act to divide Washington County, and for other purposes therein mentioned.—*Passed December* 21, 1809.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly, convened,* That the county of Washington shall be, and the same is hereby divided in the following manner, to wit: beginning on the line of demarkation, where the trading road leading from the Choctaw nation to Mobile crosses the same, thence along said trading road to the present Choctaw boundary line, thence along said boundary line to Pearl river, thence down the same, to the line of demarkation, and with the same to the place of beginning, and all that tract of country, within the above described boundary, shall compose a county, which shall be called "Wayne." Wayne.

SEC. 2. *And be it further enacted,* That all that tract of country within the following boundaries, to wit: beginning on the line of demarkation, where the trading road leading from the Choctaw nation to Mobile crosses the same, thence with the said trading road to where the fifth parallel township line crosses the same, thence east with said line to Bassett's creek, thence down the same to its junction with the Tombeckbee river, thence up said river to where the fifth parallel township line crosses the same, thence with said township line east, to Baldwin.

where it intersects the Indian boundary line, thence with said boundary line to the cut-off, thence up the cut-off to the Alabama river, thence across the same to the Indian boundary line, thence with said boundary line to the line of demarkation, and with the same west to the beginning, shall compose a county, which shall be called "Baldwin."

Washington.

SEC. 3. *And be it further enacted*, That all that tract of country within the following boundaries, to wit: beginning on the trading road leading from the Choctaw nation to Mobile, where the fifth parallel township line crosses the same, thence east with the said line to Bassett's creek, thence down the same to its junction with the Tombeckbee river, thence up the said river to where the fifth parallel township line crosses the same, thence with said township line east, to where it intersects the Indian boundary line, thence with the same to where it intersects the northern Indian boundary, thence with the same westwardly to the trading road, and with said road to the beginning, shall compose a county, which shall be called "Washington."

CHAPTER IV.

An Act to divide the counties of Wayne, Franklin, and Amite, and for other purposes therein mentioned.—*Passed December* 9, 1811.

Counties divided.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the counties of Wayne, Franklin, and Amite, shall be, and the same are hereby divided in the following manner, to wit: beginning on the line of demarkation, where the trading road leading from the Choctaw nation to Mobile crosses the same, thence along the said trading road to where the fifth parrellel township line crosses the same, thence west with said line to the fourth range of township east of Pearl river, numbering from whence the line of demarkation crosses the same, thence down the said range of townships to the line of demarkation, and with the same east to the beginning, shall compose a county, which shall be called "Greene."

Boundaries of Greene county.

Of Wayne county.

SEC. 2. *And be it further enacted*, That all that tract of country within the following boundaries, to wit: beginning on the trading road where the fifth parallel township line crosses the same, thence along said trading road to the present Choctaw boundary line, thence along said boundary line to the fourth range of townships east of Pearl river, thence down the said range of townships south to where the fifth parallel township line crosses the same; thence east with said line to the beginning, shall compose a county, which shall be called "Wayne."

CHAPTER V.

An Act to divide Washington County, to establish a County by the name of Clarke, and for other purposes.—*Passed December* 10, 1812.

Clarke county.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That all that part of Washington county lying east of Tombeckbee river, shall form a county, which shall hereafter be called and known by the name of "Clarke."

NOTE.—The remainder of this Act is obsolete.

CHAPTER VI.

An Act to divide the County of Mobile,* and to establish Courts in the Counties therein named, and for other purposes.—*Passed December* 18, 1812.

County of Mobile divided.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the county of Mobile be, and the same is hereby divided in the following manner, to wit:—all that part of the county, situate south of the thirty-first degree of north latitude, and bounded east by the Perdido river, west by the dividing ridge, between the Mobile river and the Pascagoula, shall compose a county, which shall be called "Mobile."

Boundary of Jackson county.

SEC. 2. *And be it further enacted,* That all that tract of country, within the following boundaries, to wit: south of the thirty-first degree of north latitude, and west of the dividing ridge between the Mobile and Pascagoula; and east of a line running due north from the middle of the bay of Baloxi to the thirty-first degree of north latitude, shall compose a county, which shall be called "Jackson."

NOTE.—The remainder of the act relates to the times and places of holding Courts, and may be considered as obsolete.

CHAPTER VII.

Proclamation of the Governor, establishing the county of Monroe.

NOTE.—This Proclamation was not furnished with the Manuscript.—*Printer.*

CHAPTER VIII.

An Act to divide the County of Monroe, and form a new County by the name of Montgomery.—*Passed December* 6, 1816.

Monroe county divided, and Montgomery county established.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the county at present called and known by the name of Monroe, be, and the same is hereby divided in the following manner, to wit: commencing on the western extreme of said county, at the north boundary of the thirteenth township, running thence east along said township line to the eastern bank of the Alabama river; thence down the same to the north boundary of the eleventh township, thence east along the last-mentioned line, until it intersects the southern boundary of the Creek nation; and all that tract of territory, formerly a part of Monroe county, lying north of the lines thus described, shall form a new county, hereafter to be called and known by the name of "Montgomery."

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* Mobile county was originally laid off by the Governor's proclamation. This act, however, shows its boundaries in 1812.

CHAPTER IX.

An Act to alter and extend the Boundaries of Washington, Baldwin, and Mobile Counties.—*Passed February* 7, 1818.

Extension of Wayne county.

Extension of Baldwin county.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That so much of Wayne county as may be thrown into the Territory of Alabama, by the line dividing said territory and the state of Mississippi, be, and hereby is, added to, and made a part of the county of Washington: that so much of the county of Greene as may, by said boundary line, be thrown into the said territory, be, and the same is hereby added to, and made a part of the county of Baldwin: and that so much of the county of Jackson as may be thrown into said territory, by the boundary line aforesaid, be, and the same is hereby added to, and made a part of the county of "Mobile."

NOTE.—The lines of Baldwin county were afterward materially altered, as will be seen in some following chapters.

CHAPTER X.

An Act to establish the Counties of Cotaco, Lawrence, and Franklin.—*Passed February* 4, 1818.

Boundaries of Cotaco county.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That all that tract of country lying west of the Cherokee boundary, south of Tennessee river, east of the western boundary line of range numbered five, west of the basis meridian of Madison county produced, and north of the boundary line of township numbered eight, from the southern boundary of the state of Tennessee, shall hereafter form one county, to be called and known by the name of "Cotaco."*

Boundaries of Lawrence county.

SEC. 2. *And be it further enacted,* That all that tract of country, lying west of said county of Cotaco, south of Tennessee river, east of the western boundary line of range numbered nine, and north of the boundary of township numbered eight, from the southern boundary of the state of Tennessee, shall hereafter form one county, to be called and known by the name of "Lawrence."

Boundaries of Franklin county.

SEC. 3. *And be it further enacted,* That all that tract of country, lying west of the said county of Lawrence, south of Tennessee river, and north of the boundary line of township numbered eight, from the southern boundary of the state of Tennessee, and east of the Chickasaw boundary line, shall hereafter form one county, to be called and known by the name of "Franklin."

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* See chapter 11 of this title.

CHAPTER XI.

Extracts from an Act to change the name of Ococoposa, &c.—*Passed June 14, 1821.*

Cotaco, name of changed.

SEC. 3. *And be it further enacted,* That from and after the passage of this act, the county of Cotaco shall be known and called by the name of Morgan. And all rights, actions, prosecutions, claims, and contracts of individuals, as well as bodies corporate, shall continue as if no change in the name of the county of Cotaco had taken place; and all process running in the name of Cotaco, shall hereafter run in the name of the county of Morgan.

Officers continued.

SEC. 4. *And be it further enacted,* That all officers, both civil and military, holding commissions or appointments in the said county of Cotaco, shall continue the same in the county of Morgan, during their legal or constitutional period, and all laws and parts of laws relating to the county of Cotaco, shall be construed to relate to the county of "Morgan."

CHAPTER XII.

An Act to establish the western and southern Boundaries of Madison County, and to establish the Counties of Limestone and Lauderdale.—*Passed February 6, 1818.*

Western boundary of Madison county.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That Madison county shall hereafter be bounded on the west by the western boundary line of range numbered two, west of the basis meridian of said county, extending from the southern boundary of the state of Tennessee, to the river of the same name, and said county shall be bounded on the south by said river.

Boundaries of Limestone county.

SEC. 2. *And be it further enacted,* That all that tract of country, lying west of the aforesaid county of Madison, north of Tennessee river, and east of the western boundary line of range numbered six, west of said basis meridian, shall form one county, to be called and known by the name of "Limestone."

Boundaries of Lauderdale county.

SEC. 3. *And be it further enacted,* That all that tract of country lying west of said county of Limestone, and north of Tennessee river, shall constitute a county, to be called and known by the name of "Lauderdale."

CHAPTER XIII.

An Act to establish the Counties of Blount, Tuskaloosa, and Marengo.—*Passed February* 7, 1818.

Boundaries of the county of Blount.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That hereafter all that tract of country lying west of the Cherokee boundary, south of the boundary line of township numbered eight, from the southern boundary of the state of Tennessee, bounded on the west by the Sipsey Fork, to its junction with the Mulberry Fork of the Black Warrior; from thence by the united stream to its junction with the Locust Fork of said river; thence by said river to a point opposite the southern extremity of Jones's Valley; thence by a line drawn from said river, through the southern extremity of said valley, to the main ridge dividing the waters of said river from those of Cahawba river, and bounded on the south and southeast by said ridge to its eastern extremity; and from thence by a line running due east to said Cherokee boundary, shall form one county, to be called and known by the name of "Blount."

Boundaries of Tuskaloosa county.

SEC. 2. *And be it further enacted*, That all that tract of country lying within the following bounds, to wit: beginning on the river Black Warrior, where the southern boundary line of said county of Blount leaves the same; thence southwardly with said boundary, and on the same direction, to Roupe's Valley; thence along the eastern boundary of said valley, and including the whole of the same; thence southwardly along the main ridge dividing the waters of the Black Warrior from those of the Cahawba, to the head waters of Five Mile Creek; thence down the same to the Tuskaloosa or Black Warrior river; thence a due west course to the Tombeckbee river; thence up the same to the Cotton-Gin Port; thence along Gaines's road till it strikes the township line numbered eight, from the southern boundary of the state of Tennessee; thence along said line to the Sipsey Fork; and thence down the same to the place of beginning, shall constitute one county, to be called and known by the name of "Tuskaloosa."

Boundaries of Marengo county.

SEC. 3. *And be it further enacted*, That all that tract of country bounded on the north by said county of Tuskaloosa; on the west by the Tombeckbee river; on the south by the ridge dividing the waters of Chickasaw-Bogue and Beaver Creek, and on the east by the main ridge, dividing the waters of the Black Warrior and Cahawba Rivers, shall hereafter constitute one county, to be called and known by the name of "Marengo."

CHAPTER XIV.

An Act to alter and extend the Boundaries of Marengo County.—*Passed February* 12, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That all that tract of country lying west of the county of Dallas, north of the county of Clarke, and east of the river Tombeckbee, shall be added to, and compose a part of the county of "Marengo."

Boundaries enlarged.

CHAPTER XV.

An Act concerning certain Islands in the River Tennessee.—*Passed February* 9, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That the islands in the Tennessee river, within the lines actually run in the surveys already made, shall be deemed and taken to constitute a part of the respective counties established by law within said survey, and shall belong to such counties respectively, to the shore or river boundary of which they may be most near.

Island belonging to respective counties.

SEC. 2. *And be it further enacted,* That the middle of said river Tennessee, wheresover there are no islands, shall be deemed and taken to be the boundary line between the several counties established on its banks; any thing in any law to the contrary notwithstanding.

Middle of the river the boundary line between counties.

CHAPTER XVI.

An Act to establish the Counties of Shelby and Cahawba.—*Passed February* 7, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That hereafter, all that tract of country lying west of the Cherokee boundary line; south and east of the county of Blount, and north of a line to be drawn from west to east through the southern extremity of the Cahawba valley, from the eastern boundary of said county of Blount, to Coosa River, and thence up said river to where it is intersected by the said Cherokee boundary, shall constitute one county, to be called and known by the name of "Shelby."

Boundaries of Shelby county.

SEC. 2. *And be it further enacted,* That hereafter, all that tract of country bounded on the north by the said county of Shelby, on the west and southwest by the county of Tuskaloosa; on the south by a line to be drawn from the head-waters of Five-Mile Creek to the upper end of the ridge dividing the waters of the Cahawba from those of Mulberry Creek;

Boundaries of Cahawba county.

thence by a direct line to the Coosa River, opposite the mouth of Hatchet Creek; and on the east by Coosa River, shall form one county, to be called and known by the name of "Cahawba."

CHAPTER XVIII.

An Act to establish the County of Dallas.—*Passed February* 9, 1818.

Boundaries.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That all that tract of country, bounded on the north by the county of Cahawba, on the east by the ridge dividing the waters of Mulberry from those of Cahawba, and a line running from where said ridge intersects the Alabama river, a direct course to the head of Pine-Barren creek; thence with said creek to its junction with the Alabama river; thence by a line running directly to the northeast corner of Clarke county; thence with the northern boundary of said county, to the ridge dividing the waters of the Tombeckbee, from those of the Cahawba river; thence up said ridge to the boundary of the county of Marengo, and thence with the boundary of said county, to the place of beginning, shall form one county, to be called and known by the name of "Dallas."

CHAPTER XVIII.

An Act to establish the Counties of Marion and Conecuh.—*Passed February* 13, 1818.

Boundaries of Marion county.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That all that part of the county of Tuskaloosa, lying west of the Sipsey fork of the Black Warrior, and north of a line running directly from the mouth of said fork to the ridge dividing the waters of Lookseopelala creek, and the first large creek south of the same; and thence with said ridge to the Tombeckbee river, shall form one county, to be called and known by the name of "Marion."

Boundaries of Conecuh county.

SEC. 2. *And be it further enacted,* That all that tract of country, lying east of the Federal road, and not included in any other county now established, except the county of Monroe, shall hereafter form one county, to be called and known by the name of "Conecuh."

CHAPTER XIX.

An Act to alter and ascertain more particularly the Boundaries of the County of Shelby, and to lay off a new County in the northeast part thereof, to be called and known by the name of St. Clair County.—*Passed November* 20, 1818.

Boundary line.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That Shelby county shall hereafter be bounded by a line, beginning on the north bank of the Coosa river, opposite the upper end of Proctor's Island, and running thence directly to the source of the main stream of Mulberry creek, and from thence a direct course to the mouth of James Moore's spring branch, on Mahon's creek, and thence down said creek to the ford, on the wagon road leading from Hazlett's to the pleasant valley; thence a direct course to where the road leading from Thomas Lindsay's to William Lovelady's crosses the Cahawba valley road; thence along said road to Major John Mahon's, and leaving him in the county of Cahawba, thence a direct course to where the boundary line of the county of Tuskaloosa crosses Roup's valley creek; thence along the boundary line of said county, to the southeast corner of the county of Blount, and thence along the southeast corner of the said county of Blount, to the main road leading from Jones's valley to William Guthrie's, and thence a direct course to John Gaston's, near the northern part of the Cahawba valley; thence a direct course to the mouth of Kimulge creek on the Coosa, and thence down the Coosa river, including the tract of country appertaining to Fort Williams, to the beginning.

St. Clair.

SEC. 2. *And be it further enacted*, That all that tract of country included in the following boundary lines, viz: beginning at the northwest corner of the county of Shelby, and from thence running along the ridge dividing the waters of the Black Warrior from those of the Cahawba and Coosa rivers, to the Cherokee boundary line, thence along said line to the Coosa river, thence down said river to the county of Shelby, and thence along the boundary of said county to the beginning, shall form one county, to be called and known by the name of "St. Clair."

CHAPTER XX.

An Act to alter and establish the Boundaries of Cahawba County.—*Passed November* 20, 1818.

Boundaries.

SEC. 1. *Be it enacted by the Legislative Council, and House of Representatives of the Alabama Territory, in general assembly convened*, That the county of Cahawba shall be bounded as follows, viz: beginning at Mulberry creek, opposite John Allen's, thence westwardly, so as to leave said Allen's in the county of Cahawba, and to leave George Tubb's, five miles to the south, thence to the middle of the ridge that divides the waters of the Cahawba from the waters of the Tuskaloosa, thence along said ridge to the boundary line of Tuskaloosa county, so as to leave the inhabitants east of captain James Hill's in Cahawba county, thence along said boundary line to Roup's valley creek, thence eastwardly along the boundary line of the county of Shelby to the source of the main stream of Mulberry creek, and thence down said stream to the beginning.

CHAPTER XXI.

An Act to divide Montgomery County, and to establish the County of Autauga.—*Passed November* 21, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That all that tract of country, lying northwest of the Alabama river, and included in the following boundaries, shall form one county, to be called and known by the name of Autauga, to wit: beginning on the Alabama river, at the mouth of the lower Mulberry creek, thence running up the main stream thereof to its source, thence a direct line to the north bank of the Coosa river, opposite the upper end of Proctor's island, thence down the Coosa to its junction with the Tallapoosa river, thence down the Alabama to the beginning.

Boundaries.

CHAPTER XXII.

An Act to alter and establish the Boundary Lines between the Counties of Autauga and Dallas.—*Passed November* 21, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That all that tract of country, lying west of the Alabama, and south of Mulberry creek, not included in any other county, shall be added to, and made a part of, Dallas county.

CHAPTER XXIII.

An Act to establish certain Counties therein named, and for other purposes therein mentioned.—*Passed December* 13, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the boundaries of Baldwin county be, and they are hereby altered and extended as follows, to wit: beginning at the centre of the western boundary line of township four, in range three, east of the basis meridian line of the land district east of Pearl river, thence east to the Alabama river, thence with said river to its junction with Little river, to the point of its intersection by the range line between ranges five and six, thence north with said line to the north west corner of township three, in range six; thence east, along the township line, between townships three and four, in range seven, thence south along the range line, between the ranges seven and eight, to the thirty-first degree of north latitude; thence west to the former boundary line of Baldwin county.

Boundaries of Baldwin county.

SEC. 2. *And be it further enacted*, That all that tract of country bounded as follows, to wit: beginning at the Choctaw corner; thence east to the middle of the range line, between ranges four and five, in township twelve; thence north along said

Boundaries of Wilcox county.

line, to the north west corner of township thirteen, in range five; thence east to the north east corner of township thirteen, range five; thence north along the range line, between ranges five and six, to the north west corner of township fourteen, in range six; thence along the township line, between townships fourteen and fifteen, to its intersection with the Chelatchee creek; thence down said creek to the Alabama river; thence down said river to the mouth of Pine-Barren creek; thence along said creek to its point of intersection with the township line, between townships twelve and thirteen; thence east along said line to the north east corner of township twelve, in range twelve; thence south along the range line, between the ranges twelve and thirteen, to the south east corner of township twelve, in range twelve; thence west along the township line, between townships eleven and twelve, to the north west corner of township eleven, in range twelve, thence south along the range line, between the ranges eleven and twelve, to a point in the centre of said line, between the northern and southern boundary lines of township ten; thence due west, along the centre of township ten, to the Choctaw boundary line; thence with said line to the Choctaw corner, the place of beginning, shall constitute one county, to be known and called by the name of "Wilcox."

Boundaries of Marengo.

SEC. 3. *And be it further enacted*, That the boundaries of Marengo county shall hereafter be as follows:—beginning at the Choctaw corner, thence running east to the range line dividing ranges four and five; thence north with the said range line to the northwest corner of township thirteen, in range five; thence east with the line dividing the thirteenth and fourteenth townships, to the range line dividing five and six; thence north with said range line to the northern boundary of township eighteen; thence west with the line dividing the eighteenth and nineteenth townships, to Tuskaloosa river; thence down Tuskaloosa to its junction with the Tombeckbee river; thence down Tombeckbee river to the north boundary line of Clarke county; thence with said line to the beginning.

Line between Dallas and Montgomery.

SEC. 4. *And be it further enacted*, That the dividing line between the counties of Dallas and Montgomery, be the range line between the ranges twelve and thirteen, until it strikes the Alabama river; thence down the same to the mouth of Mulberry Creek.

Boundaries of Butler county.

SEC. 5. *And be it further enacted*, That hereafter, all that tract of country, bounded as follows, to wit: beginning at the northeast corner of township six, in range eleven, in the district aforesaid; thence north on the range line between eleven and twelve, to the northeast corner of township eleven, in range eleven; thence east along the township line between eleven and twelve to the northeast corner of township eleven, in range seventeen; thence south on the range line between seventeen and eighteen, to the southeast corner of township seven, in range seventeen; thence west along the township line between six and seven, to the place of beginning, shall form one county, to be called and known by the name of "Butler."

Boundaries of Henry county.

SEC. 6. *And be it further enacted*, That all that tract of country lying east of the range line between thirteen and fourteen, south and east of the county of Butler, south of Montgomery county, west of the Indian boundary line and the Chatahoochee, and north of the thirty-first degree of north latitude, shall constitute one county, to be called and known by the name of "Henry."

Boundaries of Perry county.

SEC. 7. *And be it further enacted*, That all that tract of country, bounded as follows, to wit: beginning at John Allens', thence in a direct line to the centre of township twenty-one, between ranges eight and nine; thence north up said range line six miles; thence west, in a direct line, to the range line between six and seven, in township twenty-two; thence north up the range line nine miles; thence west along the township line between twenty-three and twenty-four, three miles; thence north to the township line between twenty-four and twenty-five; thence west to the range line between five and six; thence south to the township line between twenty-four and twenty-three, thence west three miles; thence south twelve miles; thence east to the range line between five and six; thence south along the range line to the township line dividing sixteen and seventeen; thence east, to the range line dividing six and seven; thence north to the township line dividing seventeen and eighteen; thence east to where it strikes Oakmulgee creek; thence up said creek to the township line dividing eighteen and nineteen; thence east to the Mulberry creek; thence north to the beginning, shall constitute one county, to be called and known by the name of "Perry."

Boundaries of Greene county.

SEC. 8. *And be it further enacted*, That all that tract of country, bounded as follows, to wit: beginning at the north-east corner of Marengo county; thence north with the range line which divides ranges five and six, to the northern boundary of township twenty-one; thence west along the township line dividing townships twenty-one and twenty-two, three miles; thence north to the northern boundary of township twenty-two; thence west with the township line dividing townships twenty-two and twenty-three, to Tuskaloosa river; thence up the same to the mouth of Grant's Creek; thence due west to the Tombeckbee river; thence down the same to the mouth of Tuskaloosa river; thence up the same to the north boundary of township eighteen, in range three; thence east along the line which divides the townships eighteen and nineteen, to the place of beginning, shall constitute one county, to be called by the name of "Greene."

Boundaries of Jefferson county.

SEC. 9. *And be it further enacted*, That all that tract of country, bounded as follows, to wit: beginning at a point on Tuskaloosa river, at the mouth of the first large creek below the junction of the Mulberry and Locust forks of said river: thence on a direct line to the Big Pond Spring, at the upper end of Roup's valley; thence southeast to the ridge dividing the waters of Shade's Creek from the waters of Cahawba; thence up said ridge to its northern extremity; thence by a direct line to the Cedar mountain; thence up the former line dividing Blount from St. Clair county, to a point opposite Hartgrove's, leaving said Hartgrove's in Blount county; thence by a direct line to William Dunn's, on the Mulberry fork of Tuskaloosa; thence by a direct line to the Sipsey fork; thence down said stream to its junction with the Mulberry; thence down their united streams to its junction with the Locust fork; thence down the same to its junction with the Tuskaloosa; thence down the same to the place of beginning, shall constitute one county, to be called and known by the name of "Jefferson."

*Sec. 17. *And be it further enacted*, That all that tract of country, lately obtained of the Cherokee nation of Indians, lying on the north side of the Tennessee river, south of the Tennessee state line, and east of the present Madison county line. and of Flint river, after it has left Madison county, be constituted one county, by the name of "Jackson." Establishment of Jackson.

Sec. 19. *And be it further enacted*, That all that tract of country, lying between the present Madison county line and Flint river, be added to, and make a part of Madison county. Addition to Madison county.

Sec. 34. *And be it further enacted*, That all that tract of country, commencing where the line dividing the eighteenth from the nineteenth township; thence along said line to where the fourteenth range line crosses Mulberry Creek; thence along said range line to the twentieth township; thence east along said township line to the fifteenth range; thence north along said range line to the Shelby county line; thence westward with said line to the main source of Mulberry Creek, shall be added to, and make part of Cahawba county. Addition to Cahawba county.

CHAPTER XXIV.

An Act to change the name of the County of Cahawba to that of Bibb.
Passed December 4, 1820.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, the county of Cahawba shall be called and known by the name of "Bibb."

Sec. 2. *And be it further enacted*, That all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if no change in the name of the county of Cahawba had taken place; and all process running in the name of the county of Cahawba, shall hereafter run in the name of the county of Bibb. No rights to be affected by the change.

Sec. 3. *And be it further enacted*, That all officers, both civil and military, holding commissions or appointments in the said county of Cahawba, shall continue the same in the county of Bibb, during their legal constitutional period. Officers to be continued.

Sec. 4. *And be it further enacted*, That all laws and parts of laws, relating to the county of Cahawba, shall be construed to relate to the county of Bibb. Laws to relate to Bibb county.

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* The sections omitted will be found under title "Court Houses."

Repealing. SEC. 5. *And be it further enacted,* That all acts and parts of acts, contrary to the provisions of this act, be, and the same are hereby repealed.

CHAPTER XXV.

An Act to alter the Boundaries of certain Counties therein mentioned.— *Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* Perry. That Perry county shall hereafter be bounded as follows, to wit: beginning at John Allen's on Mulberry creek, running north to the northern boundary of township twenty-one, on the range line between the ranges eleven and twelve, thence west to the range line between ranges six and seven, thence north to the northern boundary of township twenty-three, thence west six miles, thence south twelve miles, thence the former boundary line to the place of beginning.

Bibb. SEC. 2. *And be it further enacted,* That all that tract of country, beginning at the northern boundary of township twenty-one, on the range line, between ranges eight and nine, thence west to the line between ranges six and seven, thence north to the northern boundary of township twenty-three, thence east to the range line between ranges seven and eight, thence north to the northern boundary of township twenty-four, thence east to the present boundary line of Bibb county, shall be added to, and made a part of the county of Bibb.

Greene. SEC. 3. *And be it further enacted,* That all that part of Perry county, lying and being in range five, township twenty two, shall be added to, and made a part of the county of Greene.

Tuskaloosa. SEC. 4. *And be it further enacted,* That that part of Perry county lying in township twenty-three, range five, and township twenty-four, range six, shall be added to, and made part of the county of Tuskaloosa.

CHAPTER XXVI.

An Act defining the Boundaries of Marion County, and for other purposes.— *Passed December* 19, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* Boundaries. That the permanent boundaries of Marion county shall be those which follow, to wit: beginning on the line which separates the states of Mississippi and Alabama, at a point where the line dividing townships fourteen and fifteen cuts the same, thence east on said line, to the southeast corner of township fourteen, range eleven, thence north on the line dividing ranges ten and eleven, to the line which divides townships eight and nine, thence west on said line to its intersection with the state line, thence south on the state line, to the beginning.

NOTE.—Sections from two to eight, will be found under title "Court Houses."

SEC. 9. *And be it further enacted*, That a line shall commence at a point where the state line cuts the Tombeckbee river, running down the same to the Greene county line, thence east on the said county line to the line dividing ranges one and two, east of the meridian of St. Stephens; north on said line to its intersection with the Sipsey waters of the Beckbee river, thence pursuing the meanders of that stream, to that point where the line dividing ranges twelve and thirteen west of the meridian of Huntsville, touches the same, north on said line to the Marion south boundary line, west to the state line; thence on the said line to the place of beginning, which shall form one county, to be known and distinguished by the name of "Picken's county." Boundaries of Pickens county.

CHAPTER XXVII.

An Act to alter and extend the Boundaries of Jefferson County, and for other purposes.—*Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all that part of St. Clair county, lying within the following bounds, viz. beginning where the line dividing the county of St. Clair and Shelby leave Jefferson county; thence along said line to the Cahawba river; thence up said river to the mouth of a creek commonly called Grimnut's fork; thence up said creek to its extreme head, thence north to the line dividing townships fourteen and fifteen, thence along said line to Hartgrove's at the head of Jones's valley, be, and the same is hereby constituted and made a part of the county of Jefferson. Boundaries.

SEC. 2. *And be it further enacted*, That in addition to the election precincts heretofore established in Jefferson county, there shall be one at the house of Micajah Lindsay, Esquire. Election precinct.

SEC. 3. *And be it further enacted*, That this act shall be in force from and after the first day of April next.

CHAPTER XXVIII.

An Act to alter and extend the Boundaries of the County of Baldwin, and for other purposes.—*Passed December* 14, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the boundaries of the county of Baldwin be, and they are hereby altered and extended, and shall in future be comprised within the following limits, to wit: beginning at that point on the Alabama river, where it unites with Little river, thence up Little river to the point where said river is intersected by the range line between ranges five and six, east of the basis meridian line of the land district east of Pearl river, thence north along said line to the northwest corner of township three, in range six, thence east along the township line, between townships three and four, in range seven, thence south, along the range line between the ranges seven and eight, to the thirty-first degree of north latitude, thence in a direct line to the head of Perdido river, thence down said river to the mouth thereof, thence along the coast of the Gulf of Mexico to the channel or pass between Mobile point and Dauphin Island, thence through said pass, and the middle of Mobile bay, to the centre of a direct line, to be drawn between the towns of Mobile and Blakeley, thence in a direct line to the head of Middle river, so called, at its junction with the Tensaw river, thence up the Tensaw river to its junction with the Mobile river, thence up Mobile river to the junction of the Tombeckbee and Alabama rivers, thence up Tombeckbee river to the mouth of the cut-off, so called, thence through the cut-off to the Alabama river, thence up the Alabama to the mouth of Little river, the place of beginning.

SEC. 2. *And be it further enacted*, That all that part of Baldwin county, lying south of the line of Washington county, and west of the Tombeckbee and Mobile rivers, be, and the same is hereby added to, and shall in future comprise a part of the county of Mobile.

SEC. 3. *And be it further enacted*, That all that tract of country, which has hitherto been a part of Baldwin county, and which lies in the fork, commonly so called, between the rivers Alabama and Tombeckbee, and north of the cut-off, be, and the same is hereby added to, and shall in future comprise a part of the county of Monroe.

CHAPTER XXIX.

An Act to alter and extend the Limits of Autauga County, and for other purposes.—*Passed December* 13, 1820.

Boundaries.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the boundaries of Autauga county be, and they are hereby altered and extended as follows, to wit: commencing at Big Mulberry Creek, where the line dividing the nineteenth from the twentieth township crosses the same, thence east along said line to the range line between thirteen and fourteen; thence north along said line to Shelby county line, thence east along said line to Coosa river, thence down said river, to the mouth of Mulberry creek, thence up the same to the place of beginning; and the same shall be, and remain the permanent boundaries of Autauga county.

Commissioners' compensation.

SEC. 2. *And be it further enacted*, That the commissioners appointed to superintend the building of a court-house and jail in the county of Autauga, be, and they are hereby authorized to draw on the county treasurer for the county of Autauga for such sum or sums, as the county court of said county may think proper to allow them, for superintending the building of said court-house and jail in said county.

CHAPTER XXX.

An Act to alter the Boundaries of Bibb and Perry Counties.—*Passed December* 17, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That all that part of Perry county contained in the north half of township twenty-one, in range eleven, be added to, and form a part of Bibb county.

SEC. 2. *And be it further enacted,* That all that part of Bibb county contained in the south half of township twenty-two, range seven, be added to, and form a part of Perry county.

CHAPTER XXXI.

An Act to alter the Boundary Line between the Counties of Clarke and Monroe.—*Passed November* 28, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the whole of the fraction of section eight, in township seven, of range four, east, which now lies in Monroe county, be, and the same is hereby added to, and made a part of Clarke county.

CHAPTER XXXII.

An Act to establish certain Counties therein named, and for other purposes.—*Passed December* 17, 1821.

Boundaries of Montgomery county changed.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the eastern boundary of Montgomery County be, and the same is hereby altered, and the same be made the line between ranges twenty-one and twenty-two, east of the basis meridian.

Covington county established. Boundaries.

SEC. 2. *And be it further enacted,* That all that tract of country bounded as follows, to wit: beginning at the thirty-first degree of north latitude, at a point in the line between ranges thirteen and fourteen; thence north along said line to the southern boundary of Butler county; thence east along said line to the southeast corner of said county; thence along the eastern boundary of Butler county, to the line between townships eight and nine; thence east along said line to the line between ranges twenty-one and twenty-two; thence running south to the thirty-first degree of north latitude; thence west to the beginning, shall constitute a separate county, to be known and called by the name of "Covington."

Henry, boundaries changed.

SEC. 3. *And be it further enacted,* That all that tract of country bounded as follows, to wit: beginning at the thirty-first degree of north latitude, at a point in the range line between ranges twenty-one and twenty-two; thence running north along said line to the township line between townships eight and nine; thence east along said line to the Indian boundary line, formed by the treaty of Fort Jackson; thence along said boundary line to the Chatahoochee river; thence down said river to the thirty-first degree of north latitude; thence west to the beginning, shall form a separate and distinct county, and retain the name of "Henry."

Pike county established. Boundaries. SEC. 4. *And be it further enacted*, That all that tract of country bounded as follows, to wit: beginning at a point on the line between ranges seventeen and eighteen, where it intersects with the line between townships eight and nine; thence running north along said line, between ranges seventeen and eighteen, to the line between townships eleven and twelve; thence east along said line to the line between townships twenty and twenty one; thence north along said line to the eastern boundary of the state of Alabama; thence along said boundary, to the line between townships eight and nine; thence west along said line to the beginning, shall constitute one separate and distinct county, to be called and known by the name of "Pike."

Jackson, boundary changed. SEC. 5. *And be it further enacted*, That the boundaries of Jackson county shall hereafter be as follows, to wit: beginning at the mouth of Sauta creek, thence up said creek to where the Winchester road crosses the same; thence on a straight line to the south end of a ridge east of said creek, which divides the waters of Sauta creek from the waters of Roseberry creek; thence with the extreme height of said ridge to the Winchester road, on the top of the mountain, above William Hoskin's; thence with said road to the Pole Bridge branch; thence on a straight line to Paint-rock river, one mile below the mouth of the Lick-fork of said river: thence on a line due west to the extreme height of the mountain that divides the waters of Paint-rock river from the waters of Flint river; thence with the extreme height of said mountain northward to the Tennessee state line; thence east with said line to where it strikes the Tennessee river; thence down the same to the beginning.

Decatur established. Boundaries. SEC. 6. *And be it further enacted*, That all that tract of country lying west of Jackson county, south of the Tennessee state line, east of Madison county, and north of the Tennessee river, shall constitute a separate and distinct county, to be known and called by the name of "Decatur."

Jurisdiction. SEC. 7. *And be it further enacted*, That Decatur county shall have criminal jurisdiction over all that tract of country within the limits of the Cherokee nation of Indians, which lies west of Willstown valley, and east of the road leading from Ditto's landing to the town of Blountsville.

Repeal. SEC. 8. *And be it further enacted*, That all acts, and parts of acts, contrary to this act, are hereby repealed.

CHAPTER XXXIII.

An Act to alter and extend the Boundaries of Limestone County.—*Passed November* 27, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That all that tract of country which has hitherto been a part of Lauderdale county, and which lies in the fork between the rivers Tennessee and Elk, be, and the same is hereby added to, and shall in future comprise a part of the county of Limestone.

CHAPTER XXXIV.

An Act better to designate the Line between the Counties of Jackson and Decatur, and for other purposes —*Passed December* 31, 1822.

Boundary defined.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the line between Jackson and Decatur counties be as follows, to wit: beginning at the mouth of Sauta creek; thence up said creek to where the Winchester road crosses said creek; thence to Jesse Thompson's; thence to Caswell Bibey's, including said Jesse Thompson, William Cundiff, Hiram Jackson, Thomas Jones, John Smart, and said Caswell Bibey's in Decatur county; thence from said Bibey to the top of the mountain above William E. Haskins where the Winchester road descends the Cumberland mountain; thence to the most leading point of the mountain, between the mouth of the Lick fork and the mouth of Larkin's fork of Paint-rock river; thence to the top of said mountain; thence a northwest course, to the Tennessee state line.

Jackson to have jurisdiction west of Willstown valley.

SEC. 2. *And be it further enacted,* That Jackson county shall have criminal jurisdiction over all that tract of country within the limits of the Cherokee nation of Indians, which lies west of Willstown valley, and east of a line running from the mouth of Sauta creek to the nearest point of Willstown valley.

Decatur to have an additional election precinct.

SEC. 3. *And be it further enacted,* That Decatur county shall have an additional election precinct at the house of William Stedmore, on Paint-rock river, in said county.

Repeal.

SEC. 4. *And be it further enacted,* That all acts and parts of acts, contrary to the provisions of this act, be, and the same are hereby repealed.

CHAPTER XXXV.

An Act to alter and extend the Boundaries of Wilcox County.—*Passed December* 27, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That all that tract of country which has hitherto been a part of Dallas county, and which is within the following boundaries, to wit: commencing in the township line between townships fourteen and fifteen, on the main fork of Chelache creek; thence up the same to Marengo county line in section nineteen, township fifteen, range six, be, and the same is hereby added to, and shall in future comprise a part of the county of Wilcox.

CHAPTER XXXVI.

An Act to define and make plain the Western Boundary Line of Blount County.—*Passed December* 30, 1822.

Boundary defined.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the township line running between fourteenth and fifteenth townships, to Hugh Hartgrove's; thence in a direct line to the house where William Dunn formerly resided; thence with that line a due north course to the southern boundary of Morgan county, be, and the same is hereby declared the western boundary of Blount county.

Surveyor of Blount shall designate.

SEC. 2. *And be it further enacted,* That it shall be the duty of the county surveyor, to run and designate by a compass the aforesaid line, running from William Dunn's to the southern boundary of Morgan county; and shall have and receive for such services such compensation as may be allowed him by the Judge of the county court and commissioners of the revenue, to be paid out of the county treasury.

CHAPTER XXXVII.

An Act to alter the Boundaries of Perry County.—*Passed December* 30, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That township sixteen in range six be added to, and hereafter form a part of Perry county.

CHAPTER XXXVIII.

Resolution defining more particularly the Boundary Lines of certain Counties therein mentioned, and for other purposes.—*Passed January* 1, 1823.

Certain tract of country attached to Marion.

SEC. 1. *Be it resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That all that tract of country lying west of the county of Blount, south of the southern boundary line of township eight, and north of the southern boundary line of township twelve, west of the meridian line from Huntsville, shall be added to, and form a part of the county of Marion.

Tuskaloosa boundaries enlarged.

SEC. 2. *And be it further resolved,* That all that tract of country lying south of the aforesaid southern boundary line of township twelve, not at this time included within the counties of Marion, Blount, Jefferson, and Pickens, lying north of Tuskaloosa county, shall be added to, and form a part of the county of Tuskaloosa.

Election precinct on Lost Creek.

Sec. 3. *And be it further enacted*, That for the convenience of the inhabitants residing within the last-mentioned tract of country, there shall be an additional election precinct established at the house of Peter Baker, on Lost Creek.

CATTLE, HORSES, AND OTHER STOCK.—1779 & 1807.

CHAPTER I.

An Act to prevent the Importation of Distempered Cattle into this Territory.—*First passed September 21, 1779, and re-enacted in February, 1807.*

Whereas serious evils may arise to the people of this territory by the importation of distempered cattle, for remedy whereof:

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That any person importing into this territory cattle afflicted with a contagious distemper, shall be subject to a fine of ten dollars for every head so imported, recoverable before a single magistrate, with a right of appeal; one half of which shall be for the use of the territory, and the other half for the use of the person suing for the same.

CHAPTER II.

An Act concerning the Marks and Brands of Cattle and other Stock.—*Passed March, 1803, and re-enacted February, 1807.*

Brands and marks.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That every person in this territory, who hath any horses, cattle, or other stock, shall have a brand and ear mark, different from the brand and ear mark of every other person in the same county; which ear mark and brand shall be recorded in the office of the clerk of the county court of the county where such horses, cattle, &c. are; for which the clerk shall receive as his fee twenty-five cents for all his services therein, and no brand or mark similar to a brand or mark already recorded shall be admitted to record, but the person having the same shall be obliged to alter them, except as herein after excepted.

Disputed brands and marks.

Sec. 2. *And be it further enacted,* That when any dispute shall arise respecting the right to a brand, or mark, either party may apply to a justice of the peace of the county, who shall summon the adverse party to appear before him, in a certain day, therein expressed, not less than five, nor more than ten days from time of application. And the said justice shall, upon the request of either party, issue subpœnas for such witnessses as they may require, directed to any constable of the said county; who, together with the same witnesses, shall receive the same fees, and be liable to the same penalties, as are allowed or inflicted for such services and attendance or neglect in the county courts. And it shall be the duty of the said justice to give judgment thereon, a transcript whereof, certified by the said justice, shall be a sufficient authority for the clerk to record the said brand and mark: *Provided*, That every person who may think himself or herself aggrieved thereby, may appeal to the next county court, to be held in the said county, and not after.

Slaves, &c. not to mark cattle.

SEC. 3. *And be it further enacted*, That no person whosoever, shall send or permit any slave or Indian to go into any of the woods or ranges in the territory, to brand or mark any horse, mare, colt, mule, ass, cattle, hog, or sheep, under any pretence whatsoever, unless the said slave be in company, and under the direction of some reputable white person, who shall therein proceed according to the provisions of this act; and if any person be convicted thereof, he shall forfeit and pay for every animal so branded and marked, twenty dollars; recoverable by action of debt, in any court of this territory having jurisdiction; one half to the use of the county, and the other half to the informer.

SEC. 4. *And be it further enacted*, That this act shall commence and be in force from and after the passing thereof.*

CHAPTER III.

Extracts from an Act concerning Strays, and for improving the Breed of Horses, &c.—*Passed in* 1803, *Amended in* 1807.

NOTE.—This act is for the most part superseded by the stray law of 1820; but not expressly repealed: the following section seems to be still in force.

Stallions running at large.

SEC. 7. *And be it further enacted*, That if any person shall wilfully, or by neglect, suffer any stallion, above the age of two years, except such as are usually kept up, and happen to get out by accident, to run at large in the woods, or in any unenclosed range, it shall be lawful for any person to catch and geld such stallion at the risk of the owner.

NOTE.—Regulations will be found under title 12, "Cotton Gins," to prevent Stock from being injured by Cotton seed."

CHAPTER IV.

Concerning Drovers.—*Passed December* 14, 1812.

Stock not to be driven from their own range.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That it shall not be lawful for any drover or other person, to drive any horses, mules, cattle, hogs, or sheep from the range to which the same may belong; but it shall be the duty of every drover or other person who may be driving off horses, mules, cattle, hogs or sheep, if any such stock, not properly belonging to his drove, should join them, to immediately halt his drove at the nearest pen, or some other convenient place, and separate all such stock as do not properly belong to him, or the person or persons he may be employed to collect or drive stock for.

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* The offence of branding or altering the brand of another man's cattle, will be found under title 17, "Crimes and Misdemeanors."

Penalties.

Sec. 2. *And be it further enacted*, That any drover or other person who shall violate the provisions of the preceding section, shall for every offence forfeit and pay the sum of twenty dollars, with costs, recoverable before any justice of the peace, for the use of the person suing for the same: and shall moreover be liable for damages, in an action on the case, to the party injured.

Masters accountable for their slaves.

Sec. 3. *And be it further enacted*, That when any slave or slaves, employed in driving stock of any kind, shall violate the provisions of this act, his or their owner or employer shall be liable for such transgression.

Note.—For the law for the protection of stock against men who hunt in the night; see title "Fire Hunting:" see also title "Strays."

COTTON GINS.—1809.

CHAPTER I.

An Act concerning Cotton Gins.—*Passed March* 3, 1809.

[Section first repealed.]

Gin to be enclosed.

Sec. 2. *And be it further enacted*, That every owner or possessor of any gin erected in, or within one quarter of a mile of any city, town, or village, are directed and required to enclose, remove, or destroy all the cotton seed which falls from said gin, so as to prevent the putrefaction thereof; and every person so neglecting, after having five days previous notice thereof, shall forfeit and pay for the use of the territory, twenty dollars, to be recovered before any justice of the peace, for every day he shall thus neglect to remove the cotton seed as aforesaid.

Penalty.

Seed not to be thrown into any stream.

Sec. 3. *And be it further enacted*, That every owner or holder of any cotton gin within this territory, is hereby restrained from throwing or letting the cotton seed fall from their gins into any stream of water, or watercourse whatever, except the Mississippi, Tombeckbee, Alabama, Amite rivers, and the waters of Bayou Sara; and every person or persons failing to comply with the requisitions of this section, shall forfeit and pay the sum of two hundred dollars, recoverable before any court having jurisdiction thereof, one moiety to the use of the person suing for the same, and the other to the person or persons injured.

CHAPTER II.

An Act to amend an Act, entitled "An Act concerning Cotton Gins."— *Passed November* 27, 1810.

Gins to be enclosed.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That every gin holder within this territory, shall enclose his, her, or their cotton gin with a good and sufficient fence, five feet high, and so close that no hog of any size can get through the same; and every such gin shall be enclosed so as to include all the cotton seed which may fall from, or in any wise appertain to said gin; and every person or persons failing to comply with the requisitions of this act, shall forfeit and pay the sum of twenty dollars for every day they shall neglect or fail so to comply; to be sued for and recovered by the party injured, before any justice of the peace, and applied to their own use: *Provided,* That nothing in this act contained shall prevent any person or persons from recovering any special damages, he, she, or they may sustain, in consequence of any gin holder negligently keeping his, her, or their gin.

[Section the second repeals the first section of the last act.]

NOTE.—"An Act for the government of Gin Holders," passed November 16th, 1818; and which contains sundry provisions concerning the marking of cotton bales, packing the same, and exhibiting false samples, will be found under title 63, "Trade and Commerce."

COURT DAYS.

CHAPTER I.

A Table showing the Commencement of the terms of the several Courts.

What Court.	*On what Monday.*	*In what months.*
Supreme Court	second	June and December
FIRST CIRCUIT.		
Monroe	first	April and October
Clarke	third	April and October
Marengo	fourth	April and October
Washington	first after fourth	April and October
Mobile	third after fourth	April and October
Baldwin	fourth after fourth	April and October
SECOND CIRCUIT.		
Dallas	third	March and September
Wilcox	first after fourth	March and September
Perry	second after fourth	March and September
Bibb	third after fourth	March and September
Autauga	fourth after fourth	March and September

THIRD CIRCUIT.

Greene	first Monday in	March and September
Tuskaloosa	second	March and September
Jefferson	fourth	March and September
Blount	first after fourth	March and September
St. Clair	second after fourth	March and September
Shelby	third after fourth	March and September

FOURTH CIRCUIT.

Limestone	first	March and September
Lawrence	third	March and September
Lauderdale	first after fourth	March and September
Franklin	third after fourth	March and September
Marion	fifth after fourth	March and September
Pickens	sixth after fourth	March and September

FIFTH CIRCUIT.

Jackson	second	April and October
Decatur	third	April and October
Morgan	fourth	April and October
Madison	first after fourth	April and October

SIXTH CIRCUIT.

Butler	first	March and September
Conecuh	second	March and September
Covington	third	March and September
Henry	fourth	March and September
Pike	first after fourth	March and September
Montgomery	second after fourth	March and September

[By an Act passed in December, 1821.]

CHAPTER II.

COUNTY COURT DAYS.

County Courts.	*On what Mondays.*	*In what month.*
In the county of		
Mobile	second	February and June
Baldwin	third	January and June
Clarke	second	January and July
Washington	third	January and July
Monroe	third	January and July
Conecuh	third	January and June
Henry	first	March and September
Butler	second	February and August
Wilcox	fourth	January and July
Marengo	first	January and July

County Courts.	*On what Mondays.*	*In what month.*
Greene	fourth	January and July
Perry	second	January and July
Dallas	third	January and July
Autauga	second	January and July
Montgomery	first	January and July
Bibb	first	January and July
Decatur	first	March and September
Covington	first	August and February
Shelby	second	January and June
Tuskaloosa	first before the last	December and June
St. Clair	third	January and June
Jefferson	first	January and July
Blount	second	February and August
Cotaco	second	January and July
Franklin	second	February and August
Marion	third	February and August
Lawrence	first	January and July
Lauderdale	fourth	January and July
Limestone	third	January and July
Jackson	second	February and August
Madison	fourth	January and July
Pickens	second	December and June
Pike	first	January and July

[By an Act passed June 14, 1821, and amended by an Act passed 24th December, 1822.]

COUNTY COMMISSIONERS COURT.

In every county	first Monday	February, May, August, and December.

COURT-HOUSES AND COUNTY REGULATIONS.*—1809.

CHAPTER I.

An Act directing Courts to be held in the County of Madison, &c.—*Passed December 23, 1809.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That William Dickson, Edward Ward, Louis Winston, Alexander Gilbreath, and Peter Perkins, residing in the county of Madison, be appointed commissioners for the purpose of fixing on the most convenient place for establishing the public buildings in the said county; and they, or a majority of them, shall have power and authority to procure by purchase or otherwise, not less than thirty nor more than one hundred acres of land, at the most convenient and suitable place for the erection of the public buildings aforesaid, which tract of land when obtained either by purchase or otherwise as aforesaid, shall be laid out into half acre lots by the commissioners aforesaid (reserving three acres, upon which the public buildings shall be erected,) and be sold at public auction on twelve months credit; and the money arising therefrom, (after paying for the land aforesaid, if the same shall be purchased,) shall be applied by said commissioners towards defraying the expenses of erecting the public buildings of the said county.

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* "An Act directing the building and establishing of a Court-House, Jail, Pillory, Whipping-Post, and Stocks, in every County," will be found under title 49, "Prisons and Prisoners."

SEC. 2. *And be it further enacted*, That the town so laid out shall be called and known by the name of Twickenham;* and so soon as the public buildings are fit for the reception of the courts of said county, the said commissioners shall report the same to the County and Circuit, or Superior Courts of said county, as the case may be, who shall thereupon adjourn their courts respectively to the court-house so erected as aforesaid.

CHAPTER II.

An Act altering the time of holding the Intermediate Court of Madison County, and for other purposes.—*Passed December 12, 1816.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That hereafter the Intermediate County Courts of Madison County, shall be holden on the first Mondays in April and October, in each and every year, which may continue six judicial days and no longer.

Madison county intermediate courts, when holden, and how long.

SEC. 2. *And be it further enacted*, That the Justices of the said County Courts be, and they are hereby appointed Commissioners to contract for, and superintend the completion of the Public Buildings in said county.

Justices of county court appointed commissioners of public buildings.

SEC. 3. *And be it further enacted*, That the said Commissioners are hereby authorized and empowered to purchase a suitable lot or parcel of land, lying and being within the town of Huntsville, whereon to fix the jail of said county.

To purchase lot for jail in Huntsville.

SEC. 4. *And be it further enacted*, That for the purpose of defraying the expense of completing the Court-House, Jail, and Pillory, and purchasing said lot or parcel of ground, the county court be, and they are hereby authorized and empowered to draw on the county treasurer for two hundred and fifty dollars, at each term of the county or intermediate court, or so much thereof as will be sufficient for the same out of any moneys not otherwise appropriated.

Appropriation of money to public buildings.

SEC. 5. *And be it further enacted*, That so soon as the same is completed, it shall be the duty of said commissioners to lay

Accounts to be examined by county treasurer, and recorded.

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* The name of *Twickenham* was changed to that of *Huntsville*, by an act passed in 1811.

their accounts before the county treasurer, whose duty it shall be to examine and record the same in his office.

Repealing clause.

Sec. 6. *And be it further enacted,* That all acts and parts of acts, coming within the meaning and purview of this act, be, and the same are hereby repealed.

CHAPTER III.

An Act further to enable the County Court of Madison to complete the Public Buildings of said County.—*Passed February 13,* 1818.

County court authorized to lay a tax.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That, in addition to the powers already given them by law, as commissioners for that purpose, the County Court of Madison be, and they are hereby authorized to levy a special tax to enable them the more speedily to complete the public buildings of said county, to be drawn for, and applied to that object only: *Provided* such special tax shall not exceed one half of the territorial tax of said county, and shall be collected in the same manner, by the same person, and for the same per centum, as the territorial tax.

CHAPTER IV.

An Act to fix the permanent Seat of Justice, and to levy a tax to build a Court-House and Jail in Washington County.—*Passed December* 23, 1815.

Washington county, commissioners fixing site for public buildings.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That Abner S. Lipscomb, Joseph M'Carty, James Thomson, Hugh Tinnin, John Harris, Francis Boykin, and John Wammock, be, and they are hereby appointed commissioners to fix the permanent site for the public buildings of the county of Washington, and they, or a majority of them, shall have power and authority to purchase at the county expense, or receive by way of donation, for the use of county, any tract or parcel of land not exceeding one hundred and sixty acres, on which the public buildings aforesaid shall be fixed by them, and to sell and reconvey such parts of said land, as they may judge expedient, for the benefit of the county, and the commissioners aforesaid shall meet at such time or times as they may think proper, and shall have power and authority to contract for the erection of a suitable court-house and jail for said county, and to take the necessary bond and security from the undertakers. The jail to be first built, and so soon as the said public buildings shall be completed, it shall be the duty of the said commissioners to file in the clerk's office of the superior court, a notification thereof, after which time the courts of said county shall stand adjourned to the same.

At present, court where to be held.

Sec. 2. *And be it further enacted,* That until the public buildings of the county aforesaid shall be completed, the courts of said county shall be holden at the house of Robert Caller;

and the courts of said county, respectively, may be adjourned to any other place in the neighbourhood.

County tax.

SEC. 3. *And be it further enacted*, That there shall be assessed and collected annually, by the assessor and collector of the territorial tax for Washington county, a sum equal to one half of the territorial tax of said county, which said sums of money shall be paid over to said commissioners at the same time provided by law for the payment of the territorial taxes, and by them applied exclusively to the payment of the person or persons employed to erect the public buildings of said county. And the collector shall be entitled to the same commissions for collecting the said tax, as he is by law entitled to receive for collecting the territorial taxes.

Compensation for collector.

Repealing clause.

SEC. 4. *And be it further enacted*, That all acts and parts of acts, coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER V.

An Act providing for the organization of Monroe County, and altering the times of holding Courts in the Counties of Washington and Mobile.—*Passed December* 9, 1815.

Courts of Monroe, where to be holden.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That for the time being the place of holding courts in and for the county of Monroe, shall be at Fort Claiborne, at such house as the presiding judge or justices of each respective court may fix on as most suitable and convenient, and may at the discretion of the courts be adjourned for the want of necessary buildings to some more convenient place contiguous thereto.

CHAPTER VI.

Extracts from an Act making Appropriations to certain Persons therein mentioned, and for other purposes.—*Passed December* 27, 1815.

County courts to make allowances for repairs to court-houses, and to persons summoned to guard prisoners.

SEC. 3. *And be it further enacted*, That hereafter the justices of the county courts be, and they are hereby authorized to make all necessary allowances for repairs done to the court-houses and jails of their respective counties, and the claims of persons summoned to guard criminals, on the sheriff's certificate, which shall be paid out of the county treasuries respectively: *Provided*, the sum so allowed by the county court, shall not exceed one hundred dollars in any one year.

CHAPTER VII.

An Act to fix the permanent Seat of Justice for the County of Mobile, in the Town of Mobile, and to authorize the erection of a Court-House and Jail.—*Passed November* 22, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That the Seat of Justice for the County of Mobile be, and the same is hereby permanently fixed in the town of Mobile.

Commissioners. SEC. 2. *And be it further enacted*, That Alvan Robeshow, Lewis Judson, Addin Lewis, Christopher Strong Stuart, and Samuel H. Garrow, be, and they are hereby appointed commissioners, with power and authority to procure by purchase or donation, at the expense of the county, a lot of ground in said town, and to contract with some competent person to erect a court-house and jail thereon, on such plan and in such manner as they, or a majority of them may think proper: *Provided*, That the sum for building the same shall not exceed fifteen thousand dollars. Jail.

Repeal. SEC. 3. *And be it further enacted*, That all acts and parts of acts, coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER VIII.

An Act to establish the Seat of Justice in the County of Montgomery.—*Passed December* 16, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, the town of Montgomery shall be the temporary seat of justice for said county, until otherwise directed by law.*

CHAPTER IX.

Extracts from an Act to alter and extend the Boundaries of the County of Baldwin, and for other purposes.—*Passed December* 16, 1820.

[SEC. 1. Establishes the new boundary of Baldwin county.]

SEC. 4. *And be it further enacted*, That the seat of justice or court-house for the said county of Baldwin, as established by the first section of this act,† be, and the same is hereby fixed in the town of Blakeley.

SEC. 5. *And be it further enacted*, That Cyrus Sibley, James W. Peters, Francis B. Stockton, Benjamin J. Randall, and Samuel Hall, be, and they are hereby appointed commissioners, a majority of whom shall have power and authority to procure by donation, or purchase at the expense of the county, a lot of ground in the said town of Blakeley, of such size as may in their opinion be suitable for the purpose of erecting thereon a court-house and jail; and the said commissioners, or a majority of them, shall have power to contract with some person or persons for building the said court-house and jail as aforesaid, on such plan and in such manner as they may think proper: *Provided* the sum for the said buildings shall not exceed the sum of two thousand dollars. Commissioners to procure lot.

SEC. 6. *And be it further enacted*, That the county court of the said county of Baldwin, be, and they are hereby authorized and required to lay such tax on the persons and property of the inhabitants of said county liable to taxation in other cases, as shall be sufficient to defray all the expenses to be incurred under this act: *Provided* the tax so laid shall not exceed the sum of two thousand dollars. Levy tax.

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* Provisions for establishing the permanent Seat of Justice in Montgomery County, will be found under this title—Chapter 41.

† See title "County Boundaries," chap. 27.

SEC. 7. *And be it further enacted*, That it shall be the duty of the sheriff, and the clerks of the circuit and county courts, or persons now exercising the duties of those offices, to remove within the limits of Baldwin county, as now established by this act, on or before the first day of January next, and on moving into the county as aforesaid, it shall be their duty to give notice of the same to the person authorized to hold an election under the provisions of this act; and if they fail to do so, then and in that case, there shall be an election holden in the town of Blakeley, in the said county of Baldwin as aforesaid, on the second Monday in January next, for the election of a sheriff, clerk of the circuit and clerk of the county court, and that Cyrus Sibley, Charles Hall, Russell Stebbins, Benjamin J. Randall, and Francis B. Stockton, or a majority of them, be, and they are hereby appointed managers of the said election, and the said managers shall conduct said election in conformity to the election laws of this state, and shall make return to the secretary of state of the persons so elected. Sheriffs and clerks to remove. Election.

SEC. 8. *And be it further enacted*, That the clerks of the circuit and county courts in the county of Baldwin shall, immediately after the elections provided to be holden by the seventh section of this act, transfer all the records and judicial proceedings in their possession, to the clerks of the circuit and county courts respectively of the county of Baldwin, as established by this act; who shall be the keepers of the records and judicial proceedings of their respective courts. Transfer the records.

SEC. 9. *And be it further enacted*, That all cases now pending in the circuit court of Baldwin county, shall be heard and determined in the circuit court of Baldwin county, the limits and boundaries of which are defined and established by this act: *Provided*, That all criminal proceedings now pending, shall be transferred to the circuit courts of the counties respectively, which by this act are made to embrace that part of the county of Baldwin where the offences are alleged to have been committed; which courts are hereby authorized to hear and determine the same.

SEC. 10. *And be it further enacted*, That the justices of the county court of the county of Baldwin as aforesaid, or a majority of them, or their successors in office, or a majority of them, shall have power to sue for, and recover for the use of the said county, any property, real or personal, heretofore given, granted, or demised, or which may be at any future time given, granted, or demised, in the town of Blakeley, or at any other place, for the use of the said county of Baldwin, or for the use of that county in which Blakeley at the time of the gift, grant, or demise was, or may be situated. Justices to sue.

Officers hold their commissions.

Sec. 11. *And be it further enacted*, That all justices of the peace, constables, and militia officers, who may have been elected in the counties of Baldwin and Mobile, under the laws of this state, and who shall be by the operation of this act included in any other county than the one for which they were elected, be, and they are hereby authorized to act in all respects as justices of the peace, constables, and militia officers for the county in which they may respectively reside.

Election precinct.

Sec. 12. *And be it further enacted*, That there shall be an additional election precinct at the town of Florida, for the county of Mobile.

Treasurer to settle accounts.

Sec. 13. *And be it further enacted*, That it shall be the duty of the treasurer of Baldwin county, within two months after the passage of this act, to settle and adjust the accounts of said county with the judge of the county court of Baldwin, and on failure thereof, it shall be the duty of said judge to institute suit against said treasurer and his securities, and the amount of moneys in the treasury of said county shall be equally divided between the county of Mobile and the county established by this act.

Court-house to be sold.

Sec. 14. *And be it further enacted*, That the court-house and jail at M'Intosh's Bluff, in the county of Mobile, as established, shall be sold by order of the county court of Mobile; and the moneys arising from said sales shall be equally divided between the counties herein named, to be applied to county purposes.

CHAPTER X.

An Act providing for the establishment of Seats of Justice in the several Counties therein named.—*Passed November* 17, 1818.

Appointment of commissioners to fix the seat of justice for Limestone county.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That an election shall be holden at the court-house in the town of Athens, in Limestone county, on the fourth Monday of March next, and the succeeding day, for the purpose of electing five commissioners, who, or a majority of them, shall have power to fix on a suitable place for the seat of justice in the said county; at which election, all freemen, then resident in said county, above the age of twenty-one years, shall be entitled to vote; and said election shall be opened and held by the sheriff, or other proper officer, under the inspection of judges, appointed in the same manner required by law, for the election of representatives.

Qualifications of voters.

Contract, &c.

Sec. 2. *And be it further enacted*, That the commissioners, elected in pursuance of the foregoing section, or a majority of them, shall have power to contract for and receive in behalf of said county of Limestone, a good and sufficient title to four acres of land, for the purpose of erecting thereon a court-house, jail, pillory, and stocks, for the use of said county.

Superintend buildings, &c.

Sec. 3. *And be it further enacted*, That the said commissioners, or a majority of them, shall have power to contract for, direct and superintend the building of a court-house and jail, of such description and dimensions as they shall agree upon, with the approbation of the county court of said county: *Provided,* That said commissioners, or a majority of them, shall advertise for thirty days at least, in the Alabama Republican, and at three or more public places in said county, the time and place of letting said buildings, or either of them; and shall contract for the erection thereof with the lowest bidder, who shall enter into bond with sufficient security, for the performance of his contract.

Undertaker to give bond.

SEC. 4. *And be it further enacted,* That the county court of said county of Limestone be, and they are hereby authorized and required to levy such tax, not exceeding one half the amount of the territorial tax, on the persons and property of the inhabitants of said county, liable to taxation in other cases, as shall be sufficient to defray all the expenses to be incurred under this act.

Authorized to levy a tax.

SEC. 5. *And be it further enacted,* That there shall be an election holden at Somerville, in the county of Cotaco, on the first Monday in June next, and the succeeding day, for the purpose of electing five commissioners, to fix on a suitable place for the permanent seat of justice in said county, and the said election shall be conducted in the same manner prescribed in the first section of this act; and the persons elected commissioners, shall in all respects proceed in the same manner, and be governed by the same provisions, herein prescribed for the commissioners of the county of Limestone.

Election in Cotaco county for commissioners to fix seat of justice.

CHAPTER XI.

An Act to appoint Commissioners to fix the Place for the permanent Seat of Justice for the County of Clarke.—*Passed November 21, 1818.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That Lemuel J. Alston, Alexander Kilpatrick, Joseph Hearn, Solomon Boykin, William Coleman, William Anderson, and William Goode, Sen. be, and they are hereby appointed commissioners; and they, or a majority of them, are hereby empowered to fix the site of justice for said county of Clarke, and to contract for and receive titles to not less than two, nor more than one hundred and sixty acres of land, and to receive titles for the same in the name of the Chief Justice of the orphan's court of said county, and his successors in office, for the use of said county, for the purpose of erecting thereon a court-house, jail, and pillory.

Commissioners.

Fix site, and contract for land, &c.

SEC. 2. *And be it further enacted,* That the said commissioners, or a majority of them, shall have power to contract for, direct, and superintend the building of a strong and sufficient jail, and a court-house, of such dimensions as they shall agree upon: *Provided,* the said commissioners, or a majority of them, shall agree upon a plan for the said buildings, and advertise the same at least thirty days at three or more of the most public places in the said county; and shall contract for the erection

Build jail and court-house.

thereof with the lowest bidder, who shall be required to enter into bond with good and sufficient security for the faithful performance of the contract.

Levy tax.

SEC. 3. *And be it further enacted,* That the county court of the said county are authorized to levy a special tax, to pay for building the court-house and jail of the said county: *Provided,* the tax so levied shall not exceed the amount of the territorial tax.

Adjourn court.

SEC. 4. *And be it further enacted,* That the superior court of the said county shall have power to adjourn the court to such place as they may deem most convenient and advisable, until such time as the public buildings shall be erected.

CHAPTER XII.

Extracts from an Act to regulate Elections, and for other purposes.—*Passed December* 6, 1819.

County court of Autauga to levy tax to build a court-house, &c.

SEC. 7. *And be it further enacted,* That in the county of Autauga, there may be levied by the county court a tax, not exceeding one half the state tax, for the purpose of building a court-house, jail, and pillory for said county.

Separate elections in Marion county.

SEC. 8. *And be it further enacted,* That separate elections shall be opened and held, agreeable to law, in and for the county of Marion, at the house of —— M'Phaddin, in Wilson's settlement; at the house of Archibald Alexander, in Winn's settlement, at the house of John Woods, in Moore's settlement; at some suitable house in the town of Columbus, and at the house of Henry Grier, near the Buttawatche river in said county.

Seat of justice in said county.

SEC. 9. *And be it further enacted,* That hereafter, the temporary seat of justice for the county aforesaid shall be at the house of Henry Grier aforesaid, and the justices of the inferior court for said county, are hereby authorized to levy, and cause to be collected, a county tax, sufficient for the erection of a plain log court-house, and temporary jail, and are hereby appointed commissioners to let and superintend the same, under the usual principles.

Inferior court of said county levy tax, &c.

County court of St. Clair to levy tax, &c.

SEC. 11. *And be it further enacted,* That the county court of the county of St. Clair are hereby authorized to levy a tax, not exceeding one half the state tax, for the purpose of erecting a temporary jail in said county; and the said court are hereby authorized to contract for the building of the same.

CHAPTER XIII.

Extracts from an Act to establish certain Counties therein named, and for other purposes.—*Passed December* 13, 1819.

Commissioners for the county of Butler.

Of Henry county.

SEC. 10. *And be it further enacted,* That Micajah Wade, John Carter, Senior, George Harrison, Hillary Herbert, Tallifero Levingston, be, and they are hereby appointed commissioners for the county of Butler; that William C. Watson, John Fannin, Joel T. M'Clindon, Johnston Wright, and S. Smith, (Capt.)

be, and they are hereby appointed commissioners of the county of Henry; that Nathan Read, Laban Rice, Edward M'Craw, Joseph Brittain, and John Tubbs, be, and they are hereby appointed commissioners for the county of Perry; that William Black, Thomas Evans, John Speight, Thornton Brown, William M'Carroll, Joseph Laury, and John Gaston, be, and they are hereby appointed commissioners for the county of Wilcox; that Reuben Read, William Ervin, John Adams, John Cochran, and William Prude, be, and they are hereby appointed commissioners for the county of Jefferson; who, or a majority of whom, shall have power in their respective counties, to fix on a suitable place for the seat of justice in said counties respectively.

Perry county.

Of Wilcox.

Of Jefferson.

SEC. 11. *And be it further enacted*, That the said commissioners shall have power, in their respective counties, to contract for and receive, in behalf of their respective counties, a good and sufficient title to not exceeding a fourth section of land, so fixed on respectively for the seats of justice, for the purpose of erecting thereon public buildings for the use of said counties respectively.

Commissioners empowered to fix the seat of justice, &c.

SEC. 12. *And be it further enacted*, That the said commissioners, or a majority of them, in their respective counties, shall have power to contract for, erect, and superintend the building a court-house and jail of such description and dimensions as they shall agree upon, with the approbation of the county court of the counties respectively: *Provided*, that notice shall be given by said commissioners, at three or more public places in their respective counties, of the time and place of letting said buildings, or either of them; shall contract for the erection thereof with the lowest bidder, who shall enter into bond with sufficient security for the performance of his contract.

Commissioners to contract for building court-house, jail, &c.

Proviso.

SEC. 13. *And be it further enacted*, That the several county courts in said counties of Butler, Henry, Wilcox, Greene, Perry, and Jefferson, be, and they are hereby authorized and required to levy such tax, not exceeding one half the amount of the state tax, on the persons and property of the inhabitants of their respective counties, liable to taxation in other cases, as shall be sufficient to defray all expenses to be incurred under this act.

County courts of certain counties to levy tax, &c.

SEC. 14. *And be it further enacted*, That John Gilbraith, William Rino, Stephen Box, Moses Burleson, and Henry M'Pherson, be, and the same are hereby appointed commissioners for the county of Blount, who, or a majority of whom, shall have the same powers as are vested in the commissioners of Jefferson county.

Commissioners for Blount.

SEC. 15. *And be it further enacted*, That the town of Cahawba be, and is hereby fixed on, for the seat of justice for Dallas County.

Cahawba, the seat of justice for Dallas.

SEC. 16. *And be it further enacted*, That the house of Mrs. Irby, on the south side of Chickasaw Bouge, or any house within four miles therefrom, that the judges of the inferior court, or

Seat of justice in Marengo.

a majority of them, may make choice of, shall be, and is hereby made the temporary seat of justice for Marengo county.

Establishment of Jackson county.

SEC. 17. *And be it further enacted*, That all that tract of country lately obtained of the Cherokee nation of Indians, lying on the north side of the Tennessee river, south of the Tennessee state line, and east of the present Madison county line, and of Flint river after it has left Madison county, be constituted one county, by the name of Jackson.

Seat of justice of Jackson.

SEC. 18. *And be it further enacted*, That Sauta Cave shall be, and is hereby established the temporary seat of justice for the county of Jackson: *Provided*, that the county court shall have power, by adjournment, to select any other place they may deem more expedient.

Addition to Madison county.

SEC. 19. *And be it further enacted*, That all that tract of country lying between the present Madison county line, and Flint river, be added to, and make a part of Madison county.

Commissioners to Clarke county.

SEC. 20. *And be it further enacted*, That William A. Robertson, Joseph B. Earle, John Loftin, Samuel B. Shields, William F. Ezell, Robertus Love, and Edmund Butler, be, and they are hereby appointed commissioners for the county of Clarke, who, or a majority of them, shall have power to select and fix on the most suitable site for the seat of justice, in and for the county of Clarke; having due regard to health, water, and accommodations; *Provided*, such seat shall not exceed three miles from its centre.

Commissioners may purchase a place for seat of justice.

SEC. 21. *And be it further enacted*, That the commissioners aforesaid, or a majority of them, shall have power to contract for, and receive in behalf of said county, a good and sufficient title to four acres of land, at the place so fixed on for the seat of justice, for the purpose of erecting thereon a court-house, jail, and pillory for said county: *Provided, however*, the said commissioners, or a majority of them, or any one of them by the approbation of a majority, may enter one quarter section of public land, if there be any such within three miles of the centre of the county, containing a suitable place for the purpose aforesaid, for the sole use and benefit of said county, under the direction and control of the county court, who are hereby to pay for the same out of the county treasury, and the said quarter section, when entered by the said commissioners, or a majority of them, or any one of them by the approbation of the others, shall be conveyed and transferred by them or him, to the justices of the county court, and their successors in office, under a penalty of ten thousand dollars, to be recovered by an action of debt in any court having competent jurisdiction.

County court may sell lots.

SEC. 22. *And be it further enacted*, That the said county court, or a majority of them, are authorized, after the commissioners shall have selected the seat, and laid off a quantity sufficient for the county buildings, to divide the remainder into lots of a half acre each, to be sold by said court to defray the expenses of said buildings.

Commissioners may contract for court-house.

SEC. 23. *And be it further enacted*, That the said commissioners, or a majority of them, shall have power to contract for, direct, and superintend the building a court-house and jail, of such description and dimensions as they shall agree upon: *Provided,* That the said commissioners, or a majority of them, shall advertise for thirty days in the "*Halcyon,*" and at three of the most public places in said county, the time and place of letting said buildings, or either of them, and shall contract for the erection thereof with the lowest bidder, who shall enter into bond with sufficient security, payable to the justices of said county court and their successors in office, for the faithful performance of his contract.

Time for making selection for seat of justice.

SEC. 24. *And be it further enacted,* That the aforesaid commissioners shall be allowed, to the first Monday in March next, to make a selection of a site for the seat of justice: *Provided,* that if a majority of them shall neglect or refuse to act, on or before that time, it shall be the duty of the county court, and they are hereby required to make such selection themselves, and to do and perform every other act, that the commissioners are by this act authorized to perform.

County court to lay a tax.

SEC. 25. *And be it further enacted,* That the county court of said county are hereby authorized and required, to lay such tax on the persons and property of the inhabitants of said county, liable to taxation in other cases, as shall be sufficient to defray all the expenses to be incurred under this act.

Election precincts in Clarke county.

SEC. 26. *And be it further enacted,* That the said county of Clarke shall be divided into six election districts, to wit: one at the house of Duncan Campbell, one at the town of Coffeeville, one at the house of William Coats on Satilfa, one at Magoffin's store, one at the town of Jackson, and one at Suggsville.

Returns of elections, when made.

SEC. 27. *And be it further enacted,* That the returns of election of the several districts, shall be made on the next day after the close of the election, to the house of William Coats, where the votes shall be compared.

Courts to be held at Wm. Coats's.

SEC. 28. *And be it further enacted,* That until the public buildings shall have been completed, the circuit and inferior courts shall be held at the house of William Coats.

Claiborne, the seat of justice for Monroe.

SEC. 29. *And be it further enacted,* That the permanent seat of justice in and for the county of Monroe, be, and the same is hereby fixed at the town of Claiborne, in said county.

Elections in Butler county, where held.

SEC. 30. *And be it further enacted,* That all elections by the people in the county of Butler, shall be held at Fort Dale, or the most convenient house thereto, and at the house of Jesse Womack; and all elections in the county of Henry, at the houses of William C. Watson, Capt. S. Smith, and John Fannin, and in the county of Conecuh, in addition to the places heretofore designated, at the house of William Brewer; and all elections in the county of Jackson, at Sauta Cave, Honeycomb Spring, and Riley's, on Mud Creek.

Sheriffs, &c. who fall into new counties to continue in office.

SEC. 31. *And be it further enacted,* That all sheriffs and clerks of the circuit and inferior courts, who have been elected for the counties, from which the counties established by this act have been taken, who may reside in the counties established by this act, shall continue to hold and exercise the duties of their respective offices within the same, during the period for which they have been elected.

Elections in new counties, when held.

SEC. 32. *And be it further enacted*, That an election shall be held on the first Monday and Tuesday in February next, in the several counties, from which the counties established by this act shall have been taken, in which vacancies have been occasioned thereby, to fill such vacancies, and also in the several counties established by this act, in which there may be no officer or officers, for the election of a sheriff and clerks of the circuit and inferior courts, or either of them.

Justices of county court conduct elections.

SEC. 33. *And be it further enacted*, That in the counties in which elections shall be held by virtue of this act, in which there may be no sheriff, it shall be the duty of the justices of the county court, to conduct the elections in conformity with the election laws of this state.

Commissioners authorized to fix temporary seats.

SEC. 36. *And be it further enacted*, That the commissioners appointed to select the sites for the permanent seats of justice in each county, be, and they are hereby required to fix temporary seats for holding the courts, until the permanent seats be fixed on.

Seat of justice for Greene county.

SEC. 37. *And be it further enacted*, That the temporary seat of justice for Greene county shall be in the town of Erie, or some other place contiguous thereto, until otherwise provided for by law.

Commissioners.

Their powers.

SEC. 38.[*] *And be it further enacted*, That Bartley Walker, James Salten, John Speir, Radford L. Cotton, and Robert Smilie, be, and they are hereby appointed commissioners, who are authorized, or a majority of them, to fix on a site for the public buildings in the county of Conecuh, and the said commissioners, or a majority of them, are hereby authorized to purchase any quantity of land, not exceeding one quarter section, for the purpose of erecting said buildings on; which land, when so purchased, shall be for the use and benefit of said county, to be disposed of as the said commissioners may deem most expedient.[†]

CHAPTER XIV.

An Act permanently to fix the Seat of Justice in the County of Lawrence.—*Passed December 4, 1819.*

Commissioners to be elected.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That an election shall be holden in the county aforesaid, on the first Monday and Tuesday in February next, at the places by law appointed for holding the general elections therein, for the purpose of electing five commissioners, which election shall, by the proper officer, be conducted, strictly pursuant to the election laws, now in force in this state.

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[*] This section was repealed by an act to incorporate the town of Sparta, passed in December, 1821, and it was made the duty of the Commissioners to transfer all papers, documents, records, and money, in their possession, to the judge of the county court, and commissioners of roads, &c.

[†] See the act passed in 1822, to incorporate the town of Sparta. Title "TOWNS."

Commissioners may fix on a seat of justice.

SEC. 2. *And be it further enacted*, That the said commissioners, or a majority of them, shall have power to fix on a site for the public buildings in said county, which site they shall place at the centre thereof, or at the nearest eligible place thereto.

May purchase a site.

SEC. 3. *And be it further enacted*, That the commissioners to be elected as aforesaid, or a majority of them, shall have power, and it shall be their duty to contract for, and receive a good and lawful title for not less than three acres, nor more than one quarter section of land, at the place fixed on by them for the seat of justice aforesaid; which land shall, by such commissioners, be appropriated as is herein after directed, to the erection of the public buildings for the county aforesaid.

May contract for public buildings.

SEC. 4. *And be it further enacted*, That the said commissioners, or a majority of them, shall have power to contract for all the necessary public buildings for the county aforesaid, shall fix their several constructions, and superintend, reject, or receive the same, when completed.

Notice to be given of letting out public buildings.

SEC. 5. *And be it further enacted*, That the said commissioners, or a majority of them, shall give notice in some printed newspaper of the adjacent county, or in the Nashville Whig, and at least five other of the most public places in the different parts of said county, sixty days before letting out such public buildings, and on the day so notified, the said commissioners shall publicly let out the same to the lowest bidder, binding the undertaker or undertakers in a bond of sufficient penalty, and with good security, payable to the said commissioners for the completion of such public buildings according to the contract of such undertaker or undertakers.

Commissioners may sell lands.

SEC. 6. *And be it further enacted*, That the commissioners are hereby authorized to sell such lands as they may acquire for the benefit of said county, at such credits, and in lots of such dimensions as they may deem expedient; and should the moneys arising from the sale of such lands be insufficient to meet the expenditures necessary for the completion of the public buildings aforesaid, the county court is hereby empowered to lay a tax in said county, on such property as is subject to taxation, not exceeding one-fourth of the state tax, to be applied to the purpose of completing the public buildings aforesaid.

Lay a tax.

Compensation of commissioners.

SEC. 7. *And be it further enacted*, That the commissioners shall be allowed adequate compensation for their services, to be fixed by the county court, who shall draw in favour of such commissioners on the county treasurer for the amount, who shall pay over such amount accordingly.

Surplus of sales to be paid into the treasury.

SEC. 8. *And be it further enacted*, That should a purchase of land be made as contemplated, and the sales thereof transcend the amount necessary for the completion of the public buildings, and the allowance to the commissioners, such surplus shall, by those commissioners, be paid forthwith into the hands of the county treasurer, subject to the order of the county court for county purposes.

Commissioners required to take an oath.

SEC. 9. *And be it further enacted*, That the commissioners to be chosen under this act, shall, previous to their entering on the duties assigned them, take and subscribe the following oath: "I ——, do solemnly swear, that I will, according to my best and honest judgment, perform all the duties required of me as a commissioner under this act; and will select and fix on the site for the public buildings for Lawrence county, with impartiality to men or place, consulting only the common good, and equal rights of every citizen: so help me God."

And, moreover, it shall be the duty of the commissioners, so soon as they shall have performed the duties assigned them, in writing, to report the same to the county court of Lawrence, the clerk of which court shall duly record the same in his office, and the site, so selected and reported, shall be the permanent seat of justice for the county aforesaid.

CHAPTER XV.

Extracts from An Act to authorize Executors to relinquish Lands under the Act of Congress of second of March, 1821, and for other purposes.—*Passed June 14, 1821.*

Lawrence county authorized to lay tax.

SEC. 4. *And be it further enacted*, That the county court of Lawrence be, and is hereby authorized to impose a tax on the inhabitants of said county, in addition to the tax now authorized by law, not exceeding two-thirds of the amount of the state tax; which tax shall be assessed and collected in conformity with the laws now in force, regulating the assessing and collecting taxes.

Tax, how applied.

SEC. 5. *And be it further enacted*, That the said tax, when collected, shall be applied to the payment for building the court-house in said county, agreeably to the contract made by the commissioners elected for that purpose.

CHAPTER XVI.

An Act for establishing the permanent Seat of Justice in Cahawba county.—*Passed December 17, 1819.*

Commissioners to be elected, their powers.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That an election shall be holden at the falls of the Cahawba, and at the house of Noah B. Coker, on the first Monday in March next, for the purpose of electing five commissioners, who, or a majority of them, shall have power to fix on a suitable place for the seat of justice in said county, which shall be as near the centre, as an eligible situation can be found and procured, at which election, all free white male inhabitants, above the age of twenty-one years, and residents of said county, shall be entitled to vote: and said election shall be opened at the hour of ten o'clock, and close at four of the same day, by the sheriff or other proper officer, under the inspection of judges, appointed in the same manner required by law for the election of representatives.

SEC. 2. *And be it further enacted*, That the commissioners, elected in pursuance of the foregoing section, or a majority of them, shall have power to contract for and receive in behalf of said county of Cahawba, a good and sufficient title to not exceeding eighty acres of land, at the place so fixed on for the seat of justice, for the purpose of erecting thereon a court-house, jail, pillory, and stocks for the use of said county.

May purchase a site.

SEC. 3. *And be it further enacted*, That the said commissioners, or a majority of them, shall have power to contract for, direct, and superintend, the building of a court-house and jail, of such description and dimensions as they shall agree upon, with the approbation of the county court of said county: *Provided*, said commissioners, or a majority of them, shall advertise for thirty days in the Cahawba Press, and at three or more public places in said county, the time and place of letting said buildings, or either of them, and shall contract for the erection thereof with the lowest bidder, who shall enter into bond with sufficient security for the performance of his contract.

May contract for buildings.

Proviso.

SEC. 4. *And be it further enacted*, That the said commissioners are authorized to fix on a temporary seat of justice, within four miles of the centre of said county, where the courts in and for said county shall be holden, until a permanent seat of justice shall be fixed on.

May fix a temporary seat of justice.

SEC. 5. *And be it further enacted*, That the said commissioners shall be entitled to receive, each, three dollars per day, as a compensation for their services: *Provided*, that such sum shall not exceed fifteen dollars each, to be paid out of any moneys in the county treasury not otherwise appropriated.

Compensation.

SEC. 6. *And be it further enacted*, That the Falls of Cahawba shall be the seat of justice in said county, until the commissioners, elected in pursuance of the first section of this act, shall report to the county court, that the temporary or permanent seat is ready for the accommodation of the courts.

Falls of Cahawba the present seat of justice.

SEC. 7. *And be it further enacted*, That the commissioners appointed by virtue of this act, before they enter upon their duties, shall take an oath before some justice of the peace, to discharge with impartiality their duties of commissioners, having a due regard to the interest of each section of the county.

Commissioners to take an oath.

CHAPTER XVII.

An Act to provide for the establishment of the Seat of Justice in the County of Franklin.—*Passed November* 22, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That there shall be an election in the County of Franklin by the qualified electors thereof, at New Russelville, and the Big Spring, on the fourth Monday and Tuesday in January next, or the purpose of electing five commissioners, who, or a ma-

Commissioners to be elected.

jority of them, shall have power to select the most suitable place, within three miles of the centre of said county, for the seat of justice therein, and said election shall be opened and held in conformity with the laws of this state.

Powers of commissioners. SEC. 2. *And be it further enacted,* That the commissioners, when elected, or a majority of them, shall have power to contract for, or receive by donation, not more than forty, nor less than three acres of land, in behalf of said county, and receive a good and sufficient title to the same, at the place so selected for the seat of justice, for the purpose of erecting thereon a court-house, and other public buildings for the use of said county.

Their duties. SEC. 3. *And be it further enacted,* That it shall be the duty of said commissioners to contract for, and superintend the building of a court-house, and other public buildings, of such dimensions as they shall agree upon, with approbation of the county court of said county: *Provided,* that public notice shall be given by the said commissioners, for at least thirty days, in the Alabama Republican, and at three or more public places in said county, of the time and place of contracting for the erection of said buildings, or either of them, and shall contract for the erection thereof with the lowest bidder, who shall enter into bond with good and sufficient security, for the performance of his contract.

County court to lay a tax. SEC. 4. *And be it further enacted,* That for the purpose of defraying the expenses to be incurred by this Act, the county court of said county, be, and they are hereby authorized and required to lay a tax, not exceeding one-fourth the amount of the state tax, on the persons and property of the inhabitants of said county, liable to taxation as in other cases.

Commissioners to take an oath. SEC. 5. *And be it further enacted,* That before the commissioners by this act appointed, enter upon the duties assigned them, they shall respectively, before some judge of the inferior court of said county, take and subscribe the following oath:—"I ——— ———, do solemnly swear, that I will select and finally fix on the site for the public buildings for the county of Franklin, pursuant to this act foregoing, according to my best judgment, with impartiality to man or place, or any other consideration whatsoever, other than the common good and equal rights and interests of the citizens of said county generally. So help me God."

Commissioners to make report. SEC. 6. *And be it further enacted,* That the said commissioners so elected and qualified, so soon as they, or a majority of them, shall have performed the duties in this act assigned them, shall in writing make a report of all their proceedings under this act, to the county court of Franklin; the clerk of which court shall place the same of record in his office: and the site, so fixed on and reported by the said commissioners, shall be the permanent seat of justice for said county of Franklin, and this law shall be in force from the day of enactment.

CHAPTER XVIII.

An Act to establish the Seat of Justice in the County of Autauga.—*Passed November 22, 1819.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Robert Gaston, Zachariah Pope, Alsey Pollard, Alexander R. Hutchinson, and Zaccheus Powel, or a majority of them, be, and they are hereby appointed commissioners to fix on a site for the public buildings in the county of Autauga; which site, when so fixed upon, shall be and remain the permanent seat of justice for said county; and the aforesaid commissioners, or a majority of them, be, and they are hereby authorized to contract for, and superintend, the building of a suitable court-house, jail, and pillory, at such site.

Commissioners to fix on the seat of justice.

SEC. 2. *And be it further enacted,* That the commissioners aforesaid be, and they are hereby authorized, to take a bond or bonds with sufficient security, payable to the said commissioners, for the use of the county, conditioned for the faithful performance of the contract, from the person or persons contracting for the building of said court-house, jail, and pillory.

To take bond for performance.

SEC. 3. *And be it further enacted,* That the commissioners be, and they are hereby authorized to draw on the treasurer of the county of Autauga, for such sum or sums of money as may be requisite to carry into effect the provisions of this act; and the county treasurer aforesaid is hereby required to pay to the order of said commissioners, such sum or sums as by them may be required for the purposes aforesaid.

May draw on county treasury.

SEC. 4. *And be it further enacted,* That the said commissioners, before entering upon their duties as aforesaid, shall take the following oath or affirmation, (as the case may be): "That I will fix upon such site for the public buildings in the county of Autauga, as in my judgment I shall deem most eligible."

To take an oath.

SEC. 5. *And be it further enacted,* That the treasurer of said county be, and he is hereby authorized and required, to pay to each of the said commissioners, fifteen dollars, for their services, out of any moneys in the treasury of said county of Autauga not otherwise appropriated.

Compensation.

SEC. 6. *And be it further enacted,* That the said commissioners be, and they are hereby authorized, to purchase any quantity of land, not exceeding forty acres, as in their judgment they may deem proper, whereon to fix the public buildings of said county.

To purchase land for a site.

CHAPTER XIX.

Extract from an Act to alter and extend the Limits of Autauga County, and for other purposes.—*Passed December 13, 1820.*

SEC. 2. *And be it further enacted,* That the commissioners appointed to superintend the building of a court-house and jail in the county of Autauga, be, and they are hereby authorized to

draw on the county treasurer for the county of Autauga for such sum or sums, as the county court of said county may think proper to allow them, for superintending the building of said court-house and jail in said county.

CHAPTER XX.

An Act to establish the Seat of Justice in Limestone County, and for other purposes.—*Passed December 3, 1819.*

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the permanent site for the seat of justice for Limestone county is hereby established in the town of Athens.

Site at Athens.

Sec. 2. *And be it further enacted,* That Reuben Tilman, Thomas Redus, Jeremiah Tucker, Robert Pollock, and Samuel Hundley, be, and they are hereby appointed commissioners, to superintend the public buildings for said county, under the directions of the county court.

Commissioners.

Sec. 3. *And be it further enacted,* That all contracts the aforesaid commissioners have entered into, under the direction of the county court, shall be valid.

Their contracts confirmed.

CHAPTER XXI.

An Act to fix the Seats of Justice permanently in the Counties of St. Clair and Perry, and for other purposes.—*Passed December 18, 1820.*

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall be the duty of the captains in each company beat in the county of St. Clair, or in case of there being no captain in any company, the military officer having an appointment of the next grade, to hold an election at their respective muster grounds, under the inspection of two freeholders or householders, chosen by the said officer for that purpose, on the last Saturday in January next, for the purpose of electing one person, an inhabitant of the company beat in which such election is held, as commissioner, to fix the seat of justice in the said county of St. Clair.

Elections to be held in each company.

Sec. 2. *And be it further enacted,* That the said captains or officers, (as the case may be,) shall give ten days notice by advertisement, at three public places in their respective companies, of the time and place of holding such election; and every person entitled by law to vote for a senator or representative of the legislature of the state, shall be deemed a qualified elector.

Qualified electors.

Sec. 3. *And be it further enacted,* That at the close of such election, which shall be at five o'clock, the said officer conducting the same, shall, in presence of the inspectors, count out the tickets or ballots, and the person having the greatest number of votes shall be declared duly elected, and certified by the said officer and inspectors, under their hands and seals; which certificates shall be returned by the said officers to the office of

Votes declared.

the clerk of said county, on the fourth day after such election is held: and it shall be the duty of the clerk to record the same in his office.

Majority a quorum.

SEC. 4. *And be it further enacted,* That the persons elected as aforesaid, shall be deemed a board of commissioners, a majority of whom shall constitute a quorum to do business, whose duty it shall be to fix on the most eligible place in the said county for the seat of justice, having regard to natural conveniences and the interest of the county.

Commissioners to fix on site.

SEC. 5. *And be it further enacted,* That the commissioners elected under the provisions of this act, shall meet at the place of holding courts in the said county of St. Clair, the tenth day after the return of their election to the clerk's office, and fix on a place for the permanent seat of justice for said county.

Commissioners may receive donations.

SEC. 6. *And be it further enacted,* That said commissioners shall have power to receive donations from any person or persons for the purpose of defraying the expense of the public buildings for the aforesaid county: and should not sufficient donations be made to accomplish the object, the county court shall have power to levy a tax on all property now made taxable by law, to a sufficient amount to complete the public buildings, which tax shall be collected under the same regulations as other public taxes, and paid over by the collector thereof to the said commissioners, who shall appropriate the same to the purposes of public buildings for the county.

To let out public buildings.

SEC. 7. *And be it further enacted,* That the said commissioners shall, after fixing the site aforesaid, proceed to the letting out a court-house, jail and other necessary public buildings, to the lowest undertaker, giving thirty days public notice in the Tuskaloosa Republican, and at three public places in the county, and taking bond with approved security payable to the chief justice or chairman of the court, for the faithful performance of the work within the time by them fixed on, and according to the plan by them given.

Commissioners' oath.

SEC. 8. *And be it further enacted,* That the said commissioners shall, before entering on the duties assigned to them in this act, take and subscribe the following oath, before some justice of the peace: "I ——— ———, do solemnly swear, that I will, in my capacity as commissioner, in fixing the seat of justice in the county of St. Clair, and the erection of the public buildings thereon, without favour or partiality, and to the best interest of the county, to the best of my knowledge and judgment: so help me God."

Perry county commissioners to select a site.

SEC. 9. *And be it further enacted,* That Elisha F. King, Samuel D. Read, John Martin, James L. Beard, Thomas A. Perry, and Caleb Russell, be, and they are hereby appointed commissioners, whose duty it shall be to ascertain whether a suitable site can be found, calculated for the seat of justice for Perry county, within three miles of the centre thereof; which centre shall be ascertained by the county surveyor for the said county, who is hereby required to fix and ascertain said centre. In case the said commissioners, or any majority, shall be of opinion that a suitable situation for the seat of justice can be found within ten miles of the centre of the said county, they are then directed and required to fix the seat of justice at the same.

Electors of the county to vote for a site.

SEC. 10. *And be it further enacted*, That if in the opinion of a majority of the aforesaid commissioners, there is no suitable place within three miles of the centre of the said county, they are then directed and required to ascertain the nearest suitable site north of the said centre, and the qualified electors of said county shall vote whether the seat of justice shall be at the place so ascertained by the said commissioners, or at the present seat of justice for said county; and the place receiving the greatest number of votes, shall be the permanent seat of justice for Perry county.

Sheriffs to advertise elections.

SEC. 11. *And be it further enacted*, That in case the above election becomes necessary by reason of the commissioners not finding a place every way suitable within three miles of the centre, they shall immediately give notice to the sheriff of Perry county, informing him of the place they have chosen to be put in competition with the present seat of justice, whose duty it shall be immediately to advertise said election, giving one month's notice; which said election shall in every other respect be managed and conducted as elections for representatives to the state legislature are, and no vote shall be counted which shall not be for one of the two places.

Commissioners to take oath.

SEC. 12. *And be it further enacted*, That the said commissioners, before entering on their duties, shall take an oath before some justice of the peace for Perry county, for a faithful and impartial discharge of the same.

Courts to be held at present places.

SEC. 13. *And be it further enacted*, That until suitable public buildings are erected at a different place, the different courts in said county shall be held at the present seat.

Election precincts.

SEC. 14. *And be it further enacted*, That in addition to the election precincts already established in Perry county, there shall be two others, to wit: one at the house of James L. Beard, at Oldtown, and one at the house of William Woodly.

Commissioners to contract for public buildings.

SEC. 15. *And be it further enacted*, That the said commissioners, under the direction of the county court, shall be authorized and required to cause a court-house and jail to be built in said county, so soon as the site shall be fixed agreeably to this act. And the county court are hereby authorized to levy a tax in said county, not exceeding one half of the state tax in said county, for the year one thousand eight hundred and twenty-one, for carrying this act into effect.

Elections, when to commence.

SEC. 16. *And be it further enacted*, That all elections held in pursuance of this act, shall commence at ten o'clock in the forenoon, and close at five o'clock in the afternoon of the same day: and that all acts and parts of acts contravening the provisions of this act, be, and the same are hereby repealed.

CHAPTER XXII.

An Act to establish the Seat of Justice in Blount County, and for other purposes.—*Passed December* 18, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the permanent site for the seat of justice for Blount county, is hereby established in the town of Blountsville. Permanent seat.

SEC. 2. *And be it further enacted,* That John Fowler, Richard Yeelding, Lewis Johnson, Joseph H. Mead, and John Gilbreath, be, and they are hereby appointed commissioners to superintend the public buildings for said county. Commissioners.

SEC. 3. *And be it further enacted,* That the commissioners aforesaid, be, and they are hereby authorized to draw on the county treasurer, for the county of Blount, for such sum or sums of money, as the county court of said county may think proper to allow them, to be appropriated to the building a court-house and jail for said county. Court-house and jail.

CHAPTER XXIII.

An Act to authorize the County Court of Conecuh County, to levy a Tax for building a Court-House and Jail in said County, and for other purposes therein mentioned.—*Passed December* 7, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the county court of Conecuh be, and is hereby authorized and required to lay a tax on all persons and property in said county subject to taxation, not exceeding one-third of the state tax, which shall be collected by the tax collector, in the same manner, and for the same compensation that the state tax is collected and paid into the county treasury. What amount of tax.

SEC. 2. *And be it further enacted,* That the county court of the aforesaid county of Conecuh be, and is hereby authorized and required to appropriate for the building such court-house and jail as may have been contracted for, and also for other county purposes, all the moneys that shall be collected in pursuance of the preceding section. How appropriated.

SEC. 3. *And be it further enacted,* That the election precinct pointed out by law at William Brewer's, be, and the same is hereby discontinued, and instead thereof, Cumming's mill be, and is hereby made an election precinct in Conecuh county. Election precinct.

SEC. 4. *And be it further enacted,* That the town of Sparta shall be, and remain the permanent seat of justice for the aforesaid county of Conecuh. Seat of justice at Sparta.

SEC. 5. *And be it further enacted,* That the county courts of the counties of Butler and Henry respectively, be, and they are hereby authorized and required to lay a tax on all persons and property subject to taxation, in the aforesaid counties respectively, to be collected under the same regulations as are Henry and Butler counties authorized to lay a tax.

provided in the first section of this act, respecting Conecuh county, which moneys, when collected, shall be paid by the tax collector into the county treasury, and shall be appropriated by the said county courts respectively to county purposes.

Commissioners to fix seat of justice in Butler county. SEC. 6. *And be it further enacted*, That the commissioners heretofore appointed to fix upon a seat of justice for Butler county, be, and they, or a majority of them, are hereby authorized to lay off such number of lots of the lands that they may or shall have procured for that purpose, and to dispose of the same in such manner as they may think most expedient for the benefit of said county.

SEC. 7. *And be it further enacted*, That there shall be an election precinct at the house of Hartwell Elder, in addition to those heretofore appointed in Butler county.

CHAPTER XXIV.

An Act to establish and fix on a Site for the Seat of Justice in Wilcox County.—*Passed December* 18, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, Commissioners to select site. That Robert Brown, John Blackman, John Gamble, John Jenkins, and Elijah Lumsden, are hereby appointed commissioners, who, or a majority of whom, shall have power to fix on a suitable site for the seat of justice for the county of Wilcox: Proviso. *Provided*, the same shall be at the most eligible place within five miles of the centre thereof.

SEC. 2. *And be it further enacted*, That the centre of said county shall be ascertained by the county surveyor. And the commissioners aforesaid shall thereupon proceed to fix on, and determine the place proper for the seat of justice aforesaid: Commissioners' oath. *Provided*, That the aforesaid commissioners shall take an oath before some person competent to administer the same, that they will faithfully and impartially perform all the duties required of them in this act, to the best of their abilities.

Commissioners may purchase site. SEC. 3. *And be it further enacted*, That the commissioners aforesaid shall have power to purchase, or receive as a donation for said county, a tract or parcel of land, not exceeding one hundred and sixty acres, whereupon to erect the public buildings of said county.

County court may lay tax. SEC. 4. *And be it further enacted*, That the county court of the county of Wilcox shall have power to lay and collect a tax not exceeding one half the amount of the state tax, for the purpose of paying for said tract or parcel of land, and for the purpose of defraying the expenses of erecting a court-house, jail, and pillory for said county.

Town to be laid off. SEC. 5. *And be it further enacted*, That the commissioners aforesaid shall have power to lay off into lots of such size as to them may seem most expedient, the tract or parcel of land so acquired, and the same to expose to public sale: *Provided*, Reserve for public buildings. that four acres of said land be reserved from sale, for the court-house, jail, and pillory aforesaid, and that the money arising from the sale of said lots be paid over to the county treasurer by said commissioners, for the use of said county.

Commissioners may contract for public buildings.

SEC. 6. *And be it further enacted*, That the commissioners aforesaid are hereby authorized to contract for the building of a court-house, jail, and pillory, or either of them, to the lowest bidder; giving twenty days notice of their intending to let said contract: *Provided*, the person so contracting with the aforesaid commissioners be required to give bond and security for the faithful performance of his contract.

Contractor to give bond.

Seat of justice, Monroe county.

SEC. 7. *And be it further enacted by the authority aforesaid*, That the seat of justice for the county of Monroe, be permanently established in the town of Claiborne, and the county court are hereby authorized to impose a tax on the said county, not exceeding fifty per centum on the state tax, for the purpose of building a court-house for said county, and to appoint commissioners to contract for and superintend the building of the same, and the said county tax for the purpose aforesaid, shall be collected by the collector of the state tax, and by him paid into the hands of the county treasurer.*

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* In December, 1821, the county court was authorized to impose an additional tax, in an act relating to Edwin Lewis, in the following words :—

SEC. 6. *And be it further enacted*, That the county court of Monroe county, in addition to the power already granted, shall be, and they are hereby authorized and required to impose such additional tax, as may be necessary to complete the public building in said county.

CHAPTER XXV.

An Act supplementary to an Act establishing the permanent Seat of Justice in Cahawba County, passed at Huntsville, Dec. 27, 1819.—*Passed Dec.* 20, 1820.

Election of commissioners.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That if the commissioners who have been elected to fix on the site for the permanent seat of justice in the county of Cahawba, now to be called Bibb, shall fail to act, on or before the twenty-fifth day of December next, it shall be the duty of the Sheriff of said county, to cause an election to be held for the purpose of electing new commissioners.

Vacancies, how filled.

SEC. 2. *And be it further enacted*, That if any vacancy should happen, by death, resignation, or otherwise, of the said commissioners, it shall be the duty of the sheriff of said county to hold an election, to fill such vacancy; and all elections which may be held by the sheriff, or other proper officers for electing said commissioners, shall be held at the different places pointed out in said county, for electing members of the general assembly.

SEC. 3. *And be it further enacted*, That at all elections which may be held, to elect said commissioners, it shall be the duty of the sheriff of said county to advertise the same at least twenty days before the time of holding the election: and it shall be conducted in the same manner as required by law for the election of representatives.

CHAPTER XXVI.

An Act to provide for fixing the Site for the permanent Seat of Justice for the County of Marengo, and for other purposes therein mentioned.—*Passed December 6, 1820.*

Commissioners.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That John Spinks, Bowen Bennet, Allen Glover, Nathaniel Norwood, and William Irons, be and they are hereby appointed commissioners, who, or a majority of whom, shall have power to select and fix upon the most eligible site for the permanent seat of justice for the county of Marengo, within four miles from the centre thereof.

To buy land.

SEC. 2. *And be it further enacted,* That the said commissioners, or a majority of them, shall have full power to contract for, and purchase or receive by donation, not more than one quarter section, nor less than four acres of land, by them fixed upon for the seat of justice, and in behalf of said county to receive a good and lawful title to the same, which land shall by such commissioners be appropriated as is hereinafter directed, to the erection of the public buildings of the county aforesaid.

Commissioners required to lay off and sell lots.

SEC. 3. *And be it further enacted,* That the commissioners are hereby authorized and required to lay off said land in lots of such dimensions as they may deem expedient, and after reserving a sufficient number for the use of the public buildings, a school-house, or academy, and houses for public worship, that they cause the remainder thereof to be sold at public auction, at such times, and on such credit as they may deem most expedient for the benefit of said county, giving at least ninety days previous notice in one of the Cahawba or St. Stephens newspapers, and by advertisement posted up at three or more of the most public places in the county: *Provided,* that no title in fee-simple shall be given of any lot, until the whole of the purchase money be paid.

Contract for public buildings.

SEC. 4. *And be it further enacted,* That it shall be the duty of the commissioners, and they are hereby empowered, to contract for the building a court-house, jail, and pillory, of such dimensions as they shall agree upon, with the approbation of the county court: *Provided,* that public notice shall be given by the commissioners for at least thirty days, in one of the Cahawba or St. Stephens newspapers, and by advertisement posted up at three or more of the most public places within the county, of the time and place of contracting for the erection of said buildings or either of them, and shall contract for the erection thereof with the lowest bidder, who shall enter into bond with good and sufficient security for the performance of his contract.

County court to lay tax.

SEC. 5. *And be it further enacted,* That for the purpose of purchasing and acquiring such site for the seat of justice, the county court be, and they are hereby authorized and required, to levy and cause to be collected a county tax of sufficient amount, not exceeding one half of the state tax.

Commissioners' oath.

SEC. 6. *And be it further enacted,* That the commissioners appointed by this act, before they enter upon the duties assigned them, shall respectively before some justice of the peace or of the county court of said county, take and subscribe the following oath:—I ————————, do solemnly swear (or affirm) that I will select and finally fix on the site for the public buildings for the county of Marengo, pursuant to this act, according to the best of my judgment, with impartiality to man or place, or any other consideration whatever, other than the common good, and equal rights and interests of the citizens of the said county;—so help me God.

Surplus fund.

SEC. 7. *And be it further enacted,* That the commissioners shall be allowed adequate compensation for their services, to be fixed by the county court. And should a purchase of land be made as herein contemplated, and the sales thereof transcend the amount necessary for the completion of the public buildings and the allowance to the commissioners, such surplus shall by said commissioners be paid forthwith into the hands of the county treasurer, subject to the order of the county court for county purposes.

Commissioners to report.

SEC. 8. *And be it further enacted,* That the said commmissioners, so soon as they or a majority of them shall have performed the duties assigned them, shall in writing make a report of all their proceedings under this act to the county court of Marengo; the clerk of which court shall place the same on record in his office. And the site so fixed on shall be the permanent seat of justice for said county of Marengo.

Temporary site.

SEC. 9. *And be it further enacted,* That until the site for the permanent seat of justice be finally fixed upon, and the public buildings completed, that the town of Marengo shall be the place for holding courts in said county of Marengo; and the county court is hereby authorized and empowered to levy and cause to be collected a county tax sufficient to purchase or erect a plain log court-house and temporary jail, and they are hereby appointed commissioners to superintend the same.

Election precinct.

SEC. 10. *And be it further enacted,* That there shall be an additional place of holding elections, at the residence of Isaac C. Perkins, in the aforesaid county of Marengo.

SEC. 11. *And be it further enacted,* That this act shall take effect, and be in force, from and after the passage thereof.

CHAPTER XXVII.

An Act amendatory of certain Acts, and to establish certain Election Precincts therein mentioned.—*Passed June 13, 1821.*

Seat of justice, Marengo.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That so much of an act, passed at Cahawba, the sixth of December, one thousand eight hundred and twenty, entitled "An Act to provide for the fixing the Site for the permanent Seat of justice for the county of Marengo, and for other purposes therein mentioned," as limits and requires the commissioners therein named to fix upon a site within four miles of the centre of the county line, be, and the same is hereby repealed; and the commissioners are hereby authorized and directed to fix upon the most eligible site for the permanent seat of justice as near the centre of the county as may be.

Former act repealed. Commissioners to fix on site.

NOTE.—The other sections relate to Election Precincts.

CHAPTER XXVIII.

An Act defining the Boundaries of Marion County, and for other purposes.—*Passed December* 19, 1820.

[SEC. 1. See title "County Boundaries."

Commissioners to select a site for public buildings.

SEC. 2. *And be it further enacted*, That Lemuel Bean, Jabez Fitzgerald, Barnes Holloway, Sen. George White, William Metcalf, and William Davis, be, and they are hereby appointed commissioners to fix on the site for the public buildings in said county: which site they shall place at the centre thereof, or at the nearest eligible place thereto, not exceeding three miles in each direction from the centre; and the said commissioners are hereby authorized to fix on the temporary site for holding the courts in said county, in which county an election precinct is hereby fixed at the house of William Davis, on the Sypsey fork of the Buttahatchie river, and one precinct at the house of Joel Dixon, on the head of Tooksapililoh.

To purchase land for seat of justice.

SEC. 3. *And be it further enacted*, That the commissioners appointed in the preceding section, or a majority of them, shall have power, and it shall be their duty to contract for and receive a good and lawful title for not less than one quarter section of land, at the place by them fixed on for the seat of justice aforesaid.

Contract for public buildings.

SEC. 4. *And be it further enacted*, That the said commissioners, or a majority of them, shall have power to contract for all the necessary public buildings for the county aforesaid, shall fix their several constructions, and superintend, reject, or receive the same when completed.

Undertaker to give bond.

SEC. 5. *And be it further enacted*, That the said commissioners, or a majority of them, shall give sixty days previous notice of the time and place at which the public buildings may be intended to be let; at which time and place so notified the commissioners shall publicly let out the same to the lowest bidder, binding the undertaker or undertakers in bond with sufficient security, payable to the said commissioners for the faithful performance of his or their undertaking.

Authorized to sell lots.

SEC. 6. *And be it further enacted*, That the commissioners are hereby authorized to sell such lands as they may acquire for the use of the county, in lots of such dimensions, and on such conditions as they may deem expedient; and should the proceeds of such lands be insufficient to meet the expenditures incident to the completion of the public buildings aforesaid, the county court is hereby authorized to levy a county tax not exceeding one-fourth of the general tax, which shall be applied to the finishing of the public buildings in said county. County courts authorized to lay tax.

SEC. 7. *And be it further enacted*, That should a purchase of land be made by the commissioners as contemplated by this act, and the sales thereof transcend the disbursements incident to the completion of the public buildings, the surplus shall by those commissioners be paid forthwith into the county treasury, subject to the order of the county court, who shall disburse the same to the people of each township by adding to the proceeds of the sixteenth section according to quality. Surplus, if any, how disposed of.

SEC. 8. *And be it further enacted*, That the commissioners appointed in this act shall, previous to entering on the duties assigned them, take and subscribe the following oath: "I ——, do solemnly swear that I will faithfully, according to my best and honest judgment, perform all the duties required of me as a commissioner under this act, and will select and fix on the site for the public buildings for Marion county, with impartiality to men or place, consulting and being guided in that decision, by the common good and the equal rights of every citizen: so help me God." And moreover, it shall be the duty of the said commissioners, when they shall have fixed on the site for the public buildings in the county aforesaid, under their hands and seals to report the same, accompanied with a plan or map of the town to the clerk of the county court, who shall record the same in his office, and the place so fixed on and so reported, shall be the permanent seat of justice for Marion county. Commissioners' oath. Commissioners to make report.

SEC. 9. *And be it further enacted*, That a line shall commence at a point where the state line cuts the Tombeckbee river, running down the same to the Greene county line; thence east on the said county line, to the line dividing ranges one and two, east of the meridian of St. Stephens; north on said line to its intersection with the Scipse waters of the Beckbee river; thence pursuing the meanders of that stream to that point where the line dividing ranges twelve and thirteen west of the meridian of Huntsville touches the same, north on said line to the Marion south boundary line, west to the state line; thence on the said line to the place of beginning, which shall form one county, to be known and distinguished by the name of Pickens county. The temporary site for holding the courts in said county, shall be at the house of Jacob Dansby. An election precinct is established at —— Mullen's, on the road from Columbus to the Falls of the Warrior, and at James Heplin's, and one at the residence of Ezekiel Nash. Boundaries of Pickens county. Temporary seat of justice. Election precincts.

CHAPTER XXIX.

Extract from "An Act to repeal the Second Section of an Act passed the 20th December, 1820, to establish certain Election Precints therein mentioned, and for other purposes."—*Passed June 12, 1821.*

SEC. 4. *And be it further enacted*, That so much of an act, entitled An Act defining the Boundaries of Marion County, and Marion.

for other purposes, as prevents the commissioners appointed to fix on the site for the public buildings in the county of Marion, from selecting a smaller quantity of land than one quarter section, on which to erect said public buildings, be, and the same are hereby repealed, and it is hereby declared, that the said commissioners shall have authority to contract for and receive under the provisions of the above recited act, any quantity of land, not exceeding one hundred and sixty acres.

CHAPTER XXX.

An Act to alter an Act, entitled "An Act to establish certain Counties therein named, and for other purposes therein mentioned."—*Passed December* 7, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the county court of Clarke county be, and they are hereby authorized and required to levy such tax upon the persons and property of the inhabitants of said county, liable to taxation by the state, as may be sufficient to defray the expenses of the county: *Provided*, that such tax shall not exceed one half the amount of the state tax.

County court of Clarke, to lay tax.

Clarkesville.

SEC. 2. *And be it further enacted*, That the site fixed upon for the seat of justice in said county, by the commissioners appointed by law for that purpose, shall be hereafter known by the name of Clarkesville, to which place the returns of the elections of the several districts shall hereafter be made.

Process returnable to court-house.

SEC. 3. *And be it further enacted*, That the circuit and county courts of said county, shall be hereafter held at the court-house, and all writs and processes of all kinds heretofore made returnable to the house of William Coats, shall be returned to the court-house aforesaid.

Elections.

SEC. 4. *And be it further enacted*, That the election heretofore authorized to be holden at the house of William Coats, shall hereafter be held at the court-house.

SEC. 5. *And be it further enacted*, That all parts of an act passed the thirteenth December, eighteen hundred and nineteen, entitled An Act to establish certain Counties therein named, and for other purposes therein mentioned, which comes within the meaning and purview of this act, be, and the same are hereby repealed.

CHAPTER XXXI.

An Act to fix the Seat of Justice permanently in Lauderdale County.—*Passed December* 18, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That an election shall be held in the county aforesaid, on the first Monday in February next, at the places by law appointed for holding the general elections therein, for the purpose of electing seven commissioners; which election shall be holden

Election of commissioners.

by the proper officer, and be conducted strictly pursuant to the election laws now in force in this state.

Seat of justice.

SEC. 2. *And be it further enacted*, That the commissioners aforesaid, or a majority of them, shall fix on the most eligible site for the seat of justice aforesaid, as near the centre as may be expedient; having in view natural convenience, and the general interest of the county; and they shall have power to contract with the owner or owners of the land they may select for the county-site, for a tract not exceeding one hundred and sixty acres, and to take bond and security from the said owner or owners, for the perfecting a good and sufficient title to the land so purchased; and also to receive any donations in behalf of the county, which may be offered for the erection of the public buildings.

Lay off and sell lots.

SEC. 3. *And be it further enacted*, That it shall be the duty of the aforesaid commissioners to lay off the land they may purchase, or as much thereof as they may deem expedient, into lots of a convenient size, and expose the same to public sale, giving thirty days public notice in the Florence Gazette, Columbia Chronicle of Tennessee, and at three public places in the county, on such credits, and payable in such instalments as they may deem just and proper.

Public buildings.

SEC. 4. *And be it further enacted*, That the said commissioners, after selecting the place for the seat of justice, shall proceed to let out to the lowest undertaker the building a court-house, jail, and other necessary public buildings for the county of Lauderdale; first giving thirty days notice in the Florence Gazette, and at three public places in the county, and they shall take bond with approved security, from the undertaker or undertakers, in double the sum for which said public buildings shall be let out, for the faithful completion of the work by the time mentioned in the terms of letting out, and agreeable to the plan by them devised, payable to them as commissioners aforesaid.

Commissioners to superintend public buildings.

SEC. 5. *And be it further enacted*, That the said commissioners appointed by this act shall superintend the public buildings aforesaid, and, on the completion thereof, pay the undertaker or undertakers out of the moneys arising from the sales of the land or lots authorized to be sold by this act, and the balance (should there be any,) after deducting a competency for their trouble and expense, to deposit in the treasury of the county; also, they shall make a report of the whole of their proceedings to the county court of Lauderdale, which shall be entered by the clerk of said court on record.

Oath.

SEC. 6. *And be it further enacted*, That the said commissioners, before entering on the duty assigned them by this act, shall take the following oath: "I do solemnly swear that I will select and fix on the site for the seat of justice and public buildings, in the county of Lauderdale, agreeable to the provisions of this act, without favour or partiality."

Permanent seat.

SEC. 7. *And be it further enacted*, That the site for the seat of justice fixed on under the directions of this act, shall be the permanent seat of justice for said county; and this act shall be in force from the passing thereof.

CHAPTER XXXII.

An Act to fix the permanent Seat of Justice in the County of St. Clair, and for other purposes.—*Passed June 16, 1821.*

Election, Places.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall be the duty of the sheriff of the county of St. Clair, at the time and places of holding the next general election, to open a poll for Upper Catawla town and Lower Catawla town, and to receive the votes of the qualified electors of said county for the two places above mentioned, and it shall be his duty, and the officers conducting the election of members of the general assembly, to count out said votes, and make proclamation of the number of votes given in for each place, and whichever place has the greatest number of lawful votes, shall be, and is hereby declared to be the permanent seat of justice for the said county of St. Clair.

Commissioners.

SEC. 2. *And be it further enacted,* That John Massey, John Ash, John Cunningham, Joel Chandler, and George Shotwell, be, and the same are hereby appointed commissioners to let out and superintend the building of a court-house and jail for said county, at the place which may be elected according to the first section of this act.

Additional place.

SEC. 3. *And be it further enacted,* That Vaughan's place be nominated as one place for the seat of justice for said county.

Repealing clause.

SEC. 4. *And be it further enacted,* That all acts and parts of acts contravening the provisions of this act, shall be, and they are hereby repealed.

Wilcox, seat of justice.

SEC. 5. *And be it further enacted,* That Thomas Carson and Simeon Donald be, and they are hereby appointed commissioners, in addition to those appointed by an act of the general assembly, entitled "An Act to establish and fix on a Site for the Seat of Justice for Wilcox county," passed at Cahawba on the 8th of December, eighteen hundred and twenty, whose duty it shall be, in conjunction with the former commissioners, or a majority of the whole, to fix on a site for the seat of justice in Wilcox county, in conformity with the above recited act.

Perry, seat of justice.

SEC. 6. *And be it further enacted,* That the commissioners heretofore appointed for selecting a site for the seat of justice in Perry county, shall be authorized to select any place on the west side of Cahawba river, and within one mile thereof, in said county, and such place so selected, and approved by the county court, shall be and remain the permanent seat of justice for Perry county.

CHAPTER XXXIII.

An Act to authorize the Judge of the County Court of St. Clair, to levy a Tax to remunerate John Cunningham.—*Passed November* 27, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the judge of the county court of St. Clair county be, and he is hereby authorized and required to levy a tax sufficient to raise the sum of one hundred and forty-one dollars; and the money when collected is to be paid to John Cunningham, being the balance due him for erecting a temporary jail for said county. This act shall commence and be in force from and after the first day of January next.

CHAPTER XXXIV.

Extract from an Act "amendatory of certain Acts, and to establish certain Election Precincts," &c.—*Passed June* 13, 1821.

Seat of justice, Jefferson.

SEC. 6. *And be it further enacted,* That the seat of justice for the county of Jefferson be, and the same is hereby permanently fixed in the town of Elyton in said county.

CHAPTER XXXV.

***An Act, permanently to fix the Seat of Justice for the Counties of Tuskaloosa and Perry.—*Passed November* 27, 1821.**

Commissioners to be elected for Tuskaloosa county.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That an election shall be held in the county aforesaid, on the first Monday of February next, at the places by law appointed for holding the general elections therein, for the purpose of electing five commissioners, which election shall, by the proper officer, be conducted strictly pursuant to the election laws now in force in this state.

Fix on site for public buildings.

To receive title for the site, and contract for buildings.

SEC. 2. *And be it further enacted,* That the said commissioners, or a majority of them, shall have full power to fix on the site for the public buildings in said county, to contract for the site aforesaid, and for erecting the necessary public buildings; and in discharge of these duties, they shall be governed by justice, and the interest of the county, so as to render taxation on the county aforesaid unnecessary, or light as possible. They shall have power to receive a good and sufficient title in fee simple for the site thus selected, in behalf of the county, and to make contracts for the buildings aforesaid, and make report thereof to the clerk's office of the county court of Tuskaloosa, to be there recorded; and the site thus selected shall be the place of the permanent seat of justice for the county aforesaid.

Commissioners to take an oath.

SEC. 3. *And be it further enacted,* That the commissioners aforesaid shall give notice in the "American Mirror," of the time and place of their meeting, to carry into effect the provisions of this act, at least thirty days before such meeting; at which time they shall take and subscribe the following oath: "I, ——— ———, do solemnly swear, (or affirm, as the case may be,) that I will select, and finally fix on the site for the public buildings for the county of Tuskaloosa, pursuant to the provisions of this act, according to my best judgment, without favour, fear, or partiality, or any other consideration whatsoever, other than the common good, and equal rights and interests of the said county generally: so help me God."

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* See chapter 57 of this title, for an Act supplementary to the above.

Form of oath.

Temporary seat of justice at Tuskaloosa.

Sec. 4. *And be it further enacted*, That until such permanent seat of justice shall by the commissioners be declared to be in readiness for the accommodation of the courts, to be held in Tuskaloosa, the courts of the county aforesaid shall have power, and are hereby authorized to procure some place for the temporary seat of justice in the town of Tuskaloosa, so as to comport with the best interest of the county aforesaid.

Commissioners' compensation.

Sec. 5. *And be it further enacted*, That in discharge of the duties herein assigned, the commissioners shall receive such compensation as may be deemed equitable and right by the county court of the said county.

To be elected for Perry county.

Sec. 6. *And be it further enacted*, That there shall be elected seven commissioners in the county of Perry, on the first Monday of February next, by the qualified electors of said county, whose duty it shall be, and who are hereby authorized and required to meet at the seat of justice, on the first Monday of March after said election, and fix the permanent seat of justice for said county.

To fix on a site.

Sec. 7. *And be it further enacted*, That a majority of said commissioners, who do meet on the day appointed, shall have power to fix on said site; but if the said commissioners who do meet be equally divided, then the judge of the county court shall have the power to fix the seat of justice.

Sheriff give notice and hold election.

Sec. 8. *And be it further enacted*, That the sheriff of said county shall give the same notice, and be required to hold the said election pursuant to the first section of this act.

Commissioners to take oath.

Sec. 9. *And be it further enacted*, That the commissioners elected for the county of Perry, before they act, shall take the same oath as is required to be taken by the commissioners of the county of Tuskaloosa.

To receive compensation.

Sec. 10. *And be it further enacted*, That the commissioners shall receive the same compensation as is provided by the fifth section of this act.

Sec. 11. *And be it further enacted*, That this act shall commence and be in force from and after the passage thereof.

CHAPTER XXXVI.

An Act to fix the temporary Seat of Justice in the County of Bibb.—*Passed November, 27, 1821.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Henry W. Stephens, Agrippa Atkinson, and Ansel Sawyer, be, and they are hereby appointed commissioners, who, or a majority of whom, shall, on or before the first day of April next, fix the temporary seat of justice at the centre of said county, or at the most eligible place within two miles thereof; and who shall, before entering on the duties required of them by this act, take the following oath, before some judge or justice of the peace for the said county, to wit: We do solemnly swear, (or affirm, as the case may be,) that we will truly and impartially perform all the duties required of us, by an act entitled "An Act to fix the temporary Seat of Justice in the county of Bibb."

Commissioners appointed.

To fix temporary seat.

Oath to be taken.

SEC. 2. *And be it further enacted,* That the said commissioners shall, within ten days after fixing said site, report the same to the clerk of the county court of said county; and shall also, as soon as there are sufficient accommodations for holding courts at the site so fixed upon, report the same to the said clerk.

To report to clerk.

SEC. 3. *And be it further enacted,* That the clerk of said court, shall, on the receipt of said report, immediately give notice by advertisement, at three of the most public places in said county, that the site so fixed upon is ready for the accommodation of courts sitting in the county, and thereafter the same shall be the temporary seat of justice of said county.

Clerk to give notice.

SEC. 4. *And be it further enacted,* That the said commissioners shall each receive, as a full compensation for the services required of them by this act, the sum of ten dollars, to be paid out of any money in the treasury of said county not otherwise appropriated.

Commissioners' compensation.

CHAPTER XXXVII.

An Act to establish the permanent Seat of Justice in the County of Shelby.—*Passed December 3, 1821.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That David Neal, Job Mason, Benjamin C. Haslet, Ezekiel Henry, Henry Avery, James Franklin, and Thomas Beacher, sen. be, and are hereby appointed commissioners for the purpose of fixing on the most convenient place for the seat of justice, and establishing the public buildings in the said county.

Commissioners appointed.

SEC. 2. *And be it further enacted,* That the said commissioners, or a majority of them, shall have power and authority to procure by purchase or otherwise, not less than ten, nor more than forty acres of land, at the most convenient and suit-

May procure land on which to erect buildings.

able place, for the erection of the public buildings aforesaid; which tract of land when obtained, either by purchase or otherwise as aforesaid, they shall receive a good and sufficient title for the same in fee-simple, which shall be laid out in half-acre lots by the said commissioners, (reserving two acres at least upon which the public buildings shall be erected,) and be sold either at public or private sale, in such manner as a majority of them may deem best, who shall be authorized to convey a good and sufficient title to the purchaser, the nett proceeds of which, after paying for the land aforesaid, if the same shall be purchased, shall be applied by said commissioners towards defraying the expenses of erecting the public buildings of the said county.

Lay out lots.

Contract for public buildings.

Sec. 3. *And be it further enacted*, That the said commissioners, or a majority of them, shall have power to contract for all the necessary public buildings for the county aforesaid, shall fix their several constructions, and superintend, reject, or receive the same when completed.

Oath to be taken by commissioners.

Sec. 4. *And be it further enacted*, That the said commissioners, or such of them as may choose to act, (there being a majority of the whole,) shall meet at the place of holding court in said county, on the third Monday in March next, and there take and subscribe the following oath, before some justice of the peace, viz: " I —— ——, do solemnly swear, that I will well and truly perform all the duties required of me as commissioner, for fixing on the seat of justice for Shelby county, pursuant to an act of the legislature, passed for that purpose, to the best of my knowledge and ability, without favour or partiality to men or places: so help me God."

County court may lay tax.

Sec. 5. *And be it further enacted*, That for the purpose of carrying this act into effect, the commissioners' court of said county are authorized and required to lay a tax, not exceeding one-fourth of the amount of the state tax, on the persons and property of the inhabitants of said county, liable to taxation.

Temporary seat of justice.

Sec. 6. *And be it further enacted*, That until the permanent seat of justice in said county shall be fixed agreeably to this act, the temporary seat shall remain at the place where court is now held in said county: *Provided*, that as soon as the public buildings are in sufficient readiness to receive the courts, the same shall be adjourned thereto, by them respectively.

Commencement.

Sec. 7. *And be it further enacted*, That this act shall be in force from and after the passage thereof.

CHAPTER XXXVIII.

An Act to appoint Commissioners for certain Counties therein named, and for other purposes.—*Passed Dec.* 18, 1821.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That William Carter, Jun. James R. Mobly, Aaron Lockhart, Henry Jones, and Abel Polk, be, and they are hereby appointed commissioners of the county of Covington; That Andrew

Commissioners for Covington county.

Townsend, Alexander M'Call, Jacinth Jackson, Daniel Lewis, and William Cox, be, and they are hereby appointed commissioners of the county of Pike; and that William Beauchamp, Robert Irvin, William Irvin, Stephen Matthews, and James Rabb, be, and they are hereby appointed commissioners of the county of Henry; who, or a majority of whom, shall have power in their respective counties, to fix and designate a suitable place for a seat of justice, and to contract for, and superintend the erection of such public buildings, for the use of their respective counties, as they may deem necessary, and that notice shall be given by the respective commissioners aforesaid, at three or more public places in their counties, of the time and place of letting said buildings, and they shall let the same to the lowest bidder, who shall enter into bond with sufficient security to said commissioners, for the faithful performance of his contract.

Pike county.

Henry county.

May fix seat of justice, and contract for public buildings.

To give notice of time of letting public buildings.

Undertaker to give bond.

SEC. 2. *And be it further enacted,* That a majority of the commissioners for the county of Covington shall, on the third Monday of March next, at the house of Aaron Lockhart, hold an election for a sheriff, a clerk of the circuit court, and a clerk of the county court, for said county; and that a majority of the commissioners of Pike county shall, on the third Monday of March next, at the house of Andrew Townsend, hold an election for a sheriff, a clerk of the circuit court, and a clerk of the county court, of said county.

Commissioners of Covington to hold election for sheriff and clerks.

Pike to hold election for sheriff and clerks.

SEC. 3. *And be it further enacted,* That the sheriffs and clerks of said counties, elected in conformity with the provisions of this act, shall continue to hold and exercise the duties of their respective offices, during the period for which, in conformity with the law, they shall have been elected.

Sheriffs and clerks to hold office as prescribed by law.

SEC. 4. *And be it further enacted,* That the commissioners aforesaid be, and they are hereby empowered to receive and obtain from the treasurer of their respective counties, such sum of money remaining in the treasury, as may be sufficient to compensate the undertakers of the public buildings within their respective counties, which may be contracted for with such undertakers, and to remunerate themselves for the actual expenses, which, in the execution of their duties as commissioners aforesaid, they may through necessity incur.

Commissioners to pay undertakers out of county treasury.

Their remuneration.

SEC. 5. *And be it further enacted,* That the judge of the county court, and commissioners of roads and revenue of Henry county, be, and they are hereby authorized to levy an extra tax, not exceeding twenty-five per centum upon the amount of the general tax, for county purposes.

County court of Henry may levy tax

SEC. 6. *And be it further enacted,* That twenty days shall hereafter be allowed for making returns from general elections for a senator and representatives to the counties of Conecuh, Henry, Covington, and Pike, any law to the contrary notwithstanding.

20 days to make returns of elections.

SEC. 7. *And be it further enacted,* That commissioners of the revenue and roads shall be elected at the time and place provided for by this act for the election of a sheriff and clerks for

Commissioners of roads and revenue to be elected for Covington.

Covington county, under such regulations as are prescribed by law: and that the election precincts heretofore established in that part of Henry, which is now known by the name of Covington county, shall be, and they are hereby established as precincts for Covington county.

Election precincts in Covington established.

Commissioners for Wilcox.

Sec. 8. *And be it further enacted,* That John Jenkins, Benjamin Hoff, and Robert H. Scott, be, and they are hereby appointed commissioners to contract for, and superintend the public buildings in the county of Wilcox.

Temporary seat of justice for Pike county.

Sec. 9. *And be it further enacted,* That until the commissioners of the county of Pike shall select and fix upon a site for the seat of justice in said county, the temporary seat be, and is hereby established at the house of Andrew Townsend, in the aforesaid county.

CHAPTER XXXIX.

An Act to establish the temporary Seat of Justice in the County of Decatur, and for other purposes.—*Passed December* 13, 1821.

Commissioners appointed.

Temporary seat to be selected.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Robert M'Carny, James G. Holmes, John Cannimore, John Snow, and Alexander W. Dulaney, or a majority of them, be, and they are hereby appointed commissioners, to fix on a site for the temporary seat of justice for the county aforesaid, and the site selected by said commissioners shall be and remain the seat of justice, until the public lands of the United States, lying in said county, are sold; and further provision shall be made by law to fix the permanent seat of justice in said county.

Commissioners to erect temporary buildings.

Sec. 2. *And be it further enacted,* That the aforesaid commissioners shall have power to contract for, and superintend the building a temporary court-house and jail for said county: And it shall be the duty of the said commissioners to accept propositions and donations for completing said buildings, so as to relieve the county from taxation, or as little expense as possible.

Oath to be taken by commissioners.

Sec. 3. *And be it further enacted,* That the commissioners aforesaid shall, before they enter upon their duty, take the following oath, to wit: "I, ——— ———, do solemnly swear, (or affirm,) that I will discharge the duty imposed on me as a commissioner for the county of Decatur, without partiality or favour: so help me God."

Election to be held for county officers.

Who to hold.

Manner of conducting.

Sec. 4. *And be it further enacted,* That there shall be an election held in the aforesaid county on the second Monday in February, at the different precincts, for the election of a clerk of the circuit court, and a clerk of the county court, and a sheriff: which election shall be held by one justice of the peace, and two householders, in each election precinct; to be conducted in the same manner, and under the same rules and regulations, as elections are held for electing members of the general assembly.

Commissioners for Jackson.

Fix temporary seat.

SEC. 5. *And be it further enacted*, That Joseph Kirby, Benjamin Cloud, Thomas Russell, John Hencock, James Scruggs, John M'Vary, and M'Laud Cross, be, and they are hereby appointed commissioners to fix on a site for the temporary seat of justice for the county of Jackson, in the same manner and under the same regulations pointed out for fixing the temporary seat of justice in the county of Decatur.

Clerks to transfer records.

Process returnable to Decatur.

SEC. 6. *And be it further enacted*, That the clerks of the circuit and county courts for Jackson county shall, immediately after the elections provided to be holden in the fourth section of this act, transfer all the records and judicial proceedings in their possession, to the clerks of the circuit and county courts respectively, of the county of Decatur, together with a transcript of all the proceedings and papers that of right belong to said county, that may be in their possession, and all process that may be issued against persons residing in the county of Decatur, shall be made returnable to the county and circuit courts of Decatur.

County court to levy tax for erecting buildings.

Proviso. Tax not exceed a quarter of state tax.

SEC. 7. *And be it further enacted*, That it shall be the duty of the judges and commissioners of the county courts of Jackson and Decatur, to levy a tax on all taxable property in their respective counties, to be applied to the erecting a temporary court-house and jail: *Provided*, such tax should be found necessary: *Provided*, that said tax shall not exceed one-fourth the amount of the state tax in said counties.

Pickens county, commissioners elected to select site for public buildings.

SEC. 8. *And be it further enacted*, That the sheriff of Pickens county shall hold a poll, at the next general election in the said county, for the purpose of electing five commissioners, resident citizens thereof, for the purpose of selecting and fixing upon the most eligible site for the public buildings for the said county, having regard to the natural conveniences and general interest of the same; which election shall be conducted strictly pursuant to the existing election laws of this state.

Oath to be taken.

SEC. 9. *And be it further enacted*, That the said commissioners, (and in all cases a majority of them shall be sufficient for the discharge of business,) shall, before they enter upon the duties herein to them assigned, take and subscribe the following oath: "I, A. B. do solemnly swear, or affirm) that I will select and fix the site for the public buildings and seat of justice in the county of Pickens, agreeably to the provisions of this act, without favour or partiality, to the best of my judgment and belief."

To purchase land.

May sell lots.

SEC. 10. *And be it further enacted*, That the aforesaid commissioners shall have power to obtain, by purchase or otherwise, a tract of land, not exceeding one hundred and sixty acres, for the site of the public buildings; and after reserving a sufficiency for county purposes, to lay off the balance, or as much thereof as they may deem expedient, into lots of convenient sizes, and expose the same to public sale, giving at least thirty days notice in the "American Mirror," and at three or more public places in the said county, on such terms as they may think proper.

To let out buildings to lowest bidder.

Sec. 11. *And be it further enacted*, That the said commissioners, after selecting the place for the seat of justice, shall proceed to let out to the lowest undertaker the building of a court-house, jail, and necessary buildings, for the said county, by giving the same notice as is prescribed for in the preceding section, and shall take of the undertaker, or undertakers, bond, with sufficient security, payable to them as commissioners, in double the sum at which the said buildings may be let, conditioned for the faithful performance of the work, according to the plan by them devised, and in due time.

Take bond from undertaker.

Report proceedings to county court.

Sec. 12. *And be it further enacted*, That the said commissioners shall make a report of the whole of their proceedings to the clerk of the county court of Pickens county, who shall duly record the same: and to carry into effect the said purchase there may be applied any money in the county treasury, not otherwise appropriated; and that the place, when so selected, so soon as the public buildings may be fit for the reception of the court, shall be the permanent site for the seat of justice for Pickens county: and that the commissioners shall be entitled to receive such compensation for their services as may be adjudged them by the county court.

Commissioners to receive compensation.

Commencement.

Sec. 13. *And be it further enacted*, That this act shall be in force from and after the passage thereof.

CHAPTER XL.

An Act to authorize the County Court of Butler County to compensate the Commissioners heretofore appointed to fix the Seat of Justice for said County, and for other purposes.—*Passed December* 15, 1820.

County court to allow compensation.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the judge, and commissioners of revenue and roads of the county of Butler be, and they are hereby authorized to allow such compensation to the commissioners heretofore appointed to fix upon the seat of justice for said county, and their successors, as they may deem reasonable and just; and that said allowance be paid out of the county treasury of said county.

Paid out of county treasury.

Commissioners to fix seat of Justice.

Sec. 2. *And be it further enacted*, That Ward Taylor and Isaac Cook be, and they are hereby appointed commissioners, for fixing the seat of justice in Butler county, and to discharge the duties required of said commissioners by the sixth section of an act, passed December the seventh, eighteen hundred and twenty, entitled "An act to authorize the county-court of Conecuh county to levy a tax for building a court-house and jail, and for other purposes," in place of Taliaferro Levingston, and John Carter, who have declined acting.

Election precinct.

Sec. 3. *And be it further enacted*, That an additional election precinct be established at Buttsville, in Butler county; and that the election precinct heretofore established at Fort Dale be, and the same is hereby discontinued.

CHAPTER XLI.

An Act to fix the permanent Seat of Justice for the County of Montgomery.—*Passed December 17, 1821.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Edward Moseley, Benjamin Davis, John Hughes, William Graves, and William Laprade, be, and they are hereby appointed commissioners; and that they, or a majority of them, shall have full power to select and fix upon the most eligible site for the permanent seat of justice in said county, and that the said commissioners shall, before they enter upon the duties herein before mentioned, be sworn by any justice of the peace, faithfully and impartially to perform the same, in such manner as in their opinion will most promote the interest and convenience of said county.

Commissioners.

Select site.

To take oath.

SEC. 2. *And be it further enacted,* That the site selected and fixed upon by the said commissioners, or a majority of them, shall thereafter be the permanent seat of justice in said county; and that the funds retained in the county treasury of the said county by virtue of a resolution of the general assembly of Alabama, passed the sixteenth day of June, one thousand eight hundred and twenty-one, or so much thereof as shall not have been previously appropriated by the county court of said county, shall be, and the same are hereby appropriated to the purchase of a tract of land, which shall not exceed one hundred and sixty acres, for a county site, and the erection of the necessary public buildings thereon: *Provided,* a suitable site cannot be otherwise obtained.

Funds for purchase of site, &c.

SEC. 3. *And be it further enacted,* That if the said commissioners shall deem it most expedient to purchase a tract of land for the purpose aforesaid, then and in that case, it shall be lawful for the said commissioners, after retaining so much thereof as shall be sufficient for the erection of the said public buildings, to lay off the residue in lots, in such sizes, at their discretion, as will best promote the interest of the said county, and proceed to sell the same at public auction, and the proceeds thereof, together with the funds in the county treasury of said county, which have not heretofore been appropriated as aforesaid by the county court, shall be applied to the erection of the said public buildings in said county, under such restrictions and conditions as the said commissioners may prescribe.

Commissioners may lay off lots.

Proceeds, how applied.

SEC. 4. *And be it further enacted,* That the county court of said county be, and is hereby authorized, to levy a tax for the use and benefit of the said county, which shall not exceed the sum of twenty-five per centum upon the amount of the general tax.

County court may levy tax.

SEC. 5. *And be it further enacted,* That all laws and resolutions heretofore passed, which are contrary to the true intent and meaning of this act, be, and the same are hereby repealed.

Repeal.

CHAPTER XLII.

An Act to amend an Act, entitled " An Act to establish the temporary Seat of Justice in certain Counties therein named.—*Passed December* 17, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That David Buchart, Aaron Rice, and ——— Barnet, near the mouth of Paint-rock river, be, and they are hereby appointed commissioners, in addition to those already appointed, to establish the temporary seat of justice in the county of Decatur, and to be governed by the same rules, and possess the same powers, that are provided for the commissioners in the above recited act.

CHAPTER XLIII.

An Act to authorize the Judge of the County Court, and the Commissioners of the Roads and Revenue of Butler County, to levy an extra Tax for the building a Court-house and Jail in and for said County, and for other purposes.—*Passed December* 18, 1821.

To levy tax.

Sum to be levied.

How collected.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the judge of the county court, and the commissioners of the roads and revenue of Butler county, (at the same time that they may levy a county tax) be, and they are hereby authorized and required, to levy an extra tax on all persons and property in said county, liable to taxation, not exceeding one half of the state tax; which shall be collected by the tax collector of said county, in the same manner and at the same rate of compensation, that the state tax be collected, and paid over by said collector to the treasurer of the county aforesaid.

Seat of justice established.

SEC. 2. *And be it further enacted,* That the town of Buttsville shall be, and the same is hereby made the permanent seat of justice in and for the county of Butler.

County court of Monroe to levy tax.

How collected.

SEC. 3. *And be it further enacted,* That the county court of Monroe county be, and the same is hereby authorized and required, to levy a special county tax, (which shall not exceed thirty-seven and a half per centum on the state tax,) for the years one thousand eight hundred and twenty-two, and one thousand eight hundred and twenty-three, for the purpose of defraying the expenses incidental to the completion of the court-house in said county.

To be paid into county treasury.

SEC. 4. *And be it further enacted,* That the said tax shall be collected by the assessor and collector of taxes for the county of Monroe, for the years one thousand eight hundred and twenty-two, and one thousand eight hundred and twenty-three, and be paid over as soon as collected, into the county treasury of said county.

CHAPTER XLIV.

An Act to appoint Commissioners to contract for and superintend the Erection of the Public Buildings in the County of Wilcox.—*Passed December* 15, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Robert H. Scott, Benjamin Hoff, and John Jenkins, be, and they are hereby appointed commissioners to contract for, and superintend the erection of a court-house and jail in the county of Wilcox: and that all laws and parts of laws, repugnant to this act be, and the same are hereby repealed.

CHAPTER XLV.

Resolution appointing a Commissioner to act with other Commissioners in fixing the temporary Seat of Justice for Decatur County.—*Passed December* 19, 1821.

Resolved, by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That William Leg be, and he is hereby appointed commissioner, to act with the commissioners already appointed, to fix the temporary seat of justice for Decatur county.

CHAPTER XLVI.

An Act to authorize the Judge of the County Court and Commissioners of Roads and Revenue of Butler County, to levy a County Tax, and for other purposes therein mentioned.—*Passed December* 28, 1822.

NOTE.—This Act will be found under Title 62. Chapter 68.

CHAPTER XLVII.

An Act to authorize the Judge of the County Court of Mobile County to purchase a Lot of Ground for the purpose of erecting thereon the Public Buildings of said County.—*Passed December* 31, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the judge of the county court of Mobile county, or his successor in office, be, and he is hereby authorized to purchase a lot of ground in the city of Mobile, suitable for erecting thereon the public buildings of said county, and to receive a title in fee simple for the same for the use of said county.

Judge of county court to purchase a lot.

SEC. 2. *And be it further enacted,* That the judge aforesaid be, and he is hereby authorized to draw on the county treasurer of said county, in favour of such person or persons of whom said lot of ground may be purchased, for the amount of the purchase money, at such time as the same may become due by the conditions of the contract.

To draw on county treasurer for payment.

CHAPTER XLVIII.

An Act for the preservation of the several Court-houses in this State.—*Passed December* 31, 1822.

Sheriff to take charge of court-house.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall be the duty of the sheriff of each and every county within this state, and he is hereby authorized and required to take charge of the court-house of his respective county; to keep out intruders; to have it cleaned; and to observe the decays or any other injury that may be done to said court-house, or other out property attached to or near it, that may belong to said county, and make a report, at least once a year, to the county court: and the judge and commissioners of roads and revenue are hereby empowered and authorized to make such appropriations out of the county treasury as are necessary to be by the sheriff incurred to carry this act into effect.

Judge, &c. to make appropriations.

Repeal.

SEC. 2. *And be it further enacted,* That all acts and provisions, contrary to this act, be, and the same are hereby repealed.

CHAPTER XLIX.

An Act to appoint Commissioners for the superintendence of the Public Buildings in the Counties of Franklin and Lawrence.—*Passed December* 31, 1822.

Commissioners for Franklin.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Francis Golson and Anthony White be, and are hereby appointed commissioners in the place of Henry Cox and David Roane, deceased.

SEC. 2. *And be it further enacted,* That the said Francis Golson and Anthony White are hereby vested with the same powers, as were vested in the deceased commissioners.

For Lawrence.

SEC. 3. *And be it further enacted,* That John Gallagher be, and he is hereby appointed a commissioner to superintend the public buildings of Lawrence county, in lieu of James Havens, deceased.

CHAPTER L.

An Act to provide for paying for the Public Buildings of Lawrence County. *Passed December* 31, 1822.

County court to levy tax.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall be the duty of the county court of Lawrence county, to levy a tax on the inhabitants of said county, sufficient to comply with the contract already entered into by the commissioners of said county with John Grugret for building the court-house of said county.

*CHAPTER LI.

An Act, supplementary to an Act, permanently to fix the Seat of Justice for the Counties of Tuskaloosa and Perry, passed November 27th, 1821, so far as relates to Perry County.—*Passed December* 24, 1822.

Acts of commisioners approved and ratified.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all and singular the acts of the commissioners of Perry county, in fixing the seat of justice for said county, and all lands procured by the said commissioners, by purchase, donation, or otherwise for said site, taking bond for title to said site, the sale of lots made by said commissioners, and the building of a court-house by said commissioners, be, and the same are hereby approved, ratified, and confirmed; and the site selected by said commissioners is hereby declared the seat of justice for Perry county, and the acts, obligations, and contracts between said commissioners on the part and behalf of the county of Perry and individuals, shall be as binding and obligatory on said commissioners and other persons concerned therein, as if the same had have been expressly authorized by law.

CHAPTER LII.

An Act permanently to fix the Seat of Justice for the County of Blount.—*Passed December* 4, 1822.

Election to be held at certain times and places.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That an election shall be held in the county aforesaid, on the first Monday of March next, at the places by law appointed for holding the general elections therein, for the purpose of electing five commissioners; which intended election shall, by the proper officer, be advertised at each election precinct, at least twenty days previous to such election day, and be conducted strictly pursuant to the election laws now in force in this state.

Commissioners to select a site, &c.

SEC. 2. *And be it further enacted*, That the said commissioners elected as aforesaid, or a majority of them, shall have full power to fix on the site for the public buildings in said county; to contract for the site aforesaid, and for erecting the necessary buildings; and in discharge of those duties they shall be governed by justice and the interest of the county, so as to render taxation on the county aforesaid unnecessary, or as light as possible: they shall have power to receive a good and sufficient title in fee simple, for the site thus selected, in behalf of the county, and to make contracts for the buildings aforesaid, and make report thereof to the clerk's office of the county court of Blount, to be there recorded; and the site thus selected shall be the place of the permanent seat of justice for the county aforesaid.

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* See chapter 35 of this title.

Commissioners to give notice. Sec. 3. *And be it further enacted*, That the commissioners aforesaid shall give twenty days notice of the time and place of their meeting, to carry into effect the provisions of this act; at which time, they shall take and subscribe the following oath: Their oath. "I, ——— ———, do solemnly swear, (or affirm, as the case may be,) that I will select and finally fix on the site for the public buildings for the county of Blount, at or as near the centre of the said county, as an eligible site can be found, according to my best judgment, without favour, fear, or partiality, or without any other consideration whatsoever, other than the common good, and the equal rights and interest of the said county generally."

Their compensation. Sec. 4. *And be it further enacted*, That in discharge of the duties herein assigned, the commissioners shall receive such compensation, as may be deemed equitable and right by the county court of the said county.

CHAPTER LIII.

An Act to authorize a Levy of a County Tax in St. Clair, for the purpose of building a Court-house.—*Passed December* 31, 1822.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, County court may levy tax. That the judge of the county court and commissioners of roads and revenue of St. Clair county, be, and they are hereby authorized to levy an extra tax on all persons and property in said county subject to taxation, not exceeding one half on the amount of the state tax, to be collected by the tax collector of said county in the same way, manner, and at the same rate of compensation as the state tax is collected, and by him paid to the commissioners appointed to superintend the public buildings for said county.

Sec. 2. *And be it further enacted*, That all acts already, or hereafter to be performed by the commissioners appointed to superintend the public buildings in St. Clair county, shall be considered lawful and conclusive: and the said commissioners shall be paid out of the county treasury one dollar per day, for each day they may be employed in discharging the duties required of them by law.

CHAPTER LIV.

An Act to organize the Counties of Covington and Pike.—*Passed December* 12, 1822.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, Commissioners for Pike. That Alexander M'Call, Obadiah Pitts, James Arthur, Edmund Hobby, and Daniel Lewis, be, and they are hereby appointed Their duty. commissioners for the county of Pike, a majority of whom shall have power and authority to designate and fix upon a suitable place for a seat of justice for said county; to contract for, and superintend the erection of such public buildings for the use of said county, as they may deem necessary; which shall be let to the lowest bidder, after giving twenty days notice, at three or more public places in said county, of the time and place, when, and where, the same shall be let; and until a selection shall be so made, that the house of Samuel Sivilley be the seat of justice for said county.

Commissioners for Covington.

Their duty.

SEC. 2. *And be it further enected*, That John M. Chapman, William Arthur, junior, Henry Jones, Abel Polk, and John Cruse, be, and they are hereby appointed commissioners for the county of Covington, a majority of whom shall convene on the first Monday in March next, at the place fixed upon as the seat of justice for said county; and a majority of the commissioners for the county of Pike shall meet at the house of Samuel Sivilley, on the day aforesaid, and proceed to hold elections for a sheriff, a clerk of the circuit court, a clerk of the county court, and commissioners of the revenue and roads, for their respective counties, under such regulations as are prescribed by law.

Commissioners to take oath.

SEC. 3. *And be it further enacted*, That said commissioners shall, before they proceed to the discharge of the duties required of them by the foregoing section, take the oath required by law to be taken by managers of elections for the general assembly, to be administered by the judge of the county court, or any justice of the peace.

SEC. 4. *And be it further enacted*, That the commissioners aforesaid be, and they are hereby empowered, to receive and obtain from the treasurer of their respective counties, such sum of money remaining in the treasury, which may be contracted for with such undertakers; and to remunerate themselves for the actual expenses which, in the execution of their duties as commissioners aforesaid, they may necessarily incur.

County court may levy tax.

SEC. 5. *And be it further enacted*, That the judges of the county courts and commissioners of roads and revenue of Pike, Covington and Henry counties, be, and they are hereby authorized to levy an extra tax, not exceeding fifty per centum upon the amount of the general tax, for county purposes.

30 days to make returns.

SEC. 6. *And be it further enacted*, That thirty days shall hereafter be allowed for making returns from the general elections for a senator and representatives, to the counties of Henry, Covington, and Pike, any law to the contrary notwithstanding.

Commissioners failing to meet, may meet in April.

SEC. 7. *And be it further enacted*, That if the aforesaid commissioners shall fail to meet at the time appointed, to perform the duties prescribed by this act, that they shall have power to meet on the first Monday in April next.

Election precinct in Henry.

SEC. 8. *And be it further enacted*, That the election precinct at the house of John Turner, in Henry county, be discontinued; and in place thereof, an election shall be held at the house of John Morgan: that in addition to the precincts already established for Henry county, an election shall be held at the house of Robert Johnson.

Commissioners to lay off beats. To order elections.

SEC. 9. *And be it further enacted*, That the commissioners of the counties of Pike and Covington, shall have power to lay off their respective counties into beats; and shall order an election for constables, justices of the peace, captains and all inferior commissioned military officers in the different beats of their respective counties; and it shall be the duty of the sheriff of those counties, so soon as elected and commissioned, to superintend and conduct said elections.

Distribution of acts.

SEC. 10. *And be it further enacted*, That hereafter the person employed to carry and distribute the public acts, shall not be entitled to any pay for carrying and distributing the acts in Henry, Pike, and Covington counties, unless he produce a receipt from the clerk of the circuit court, that the same were delivered in due time.

CHAPTER LV.

An Act supplementary to An Act to establish the permanent Seat of Justice in the County of Shelby, and for other purposes.—*Passed December* 30, 1822.

Commissioners appointed.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That Daniel M'Laughlin, William Gilbert, Isaac Hutcherson, Edmund King, Bennett Ware, Webb Kidd, and Abraham Smith, esquires, be, and they are hereby appointed commissioners for the purpose of selecting and fixing on the most convenient and eligible site for the seat of justice, and for establishing the public buildings in said county.

Their duty.

SEC. 2. *And be it further enacted*, That the said commissioners, or a majority of them, shall have power and authority to procure by purchase or otherwise, a site as aforesaid, within six miles of the centre of the county; which centre shall be ascertained by the county surveyor, whose duty it shall be to have due regard to the different extremes in performing that duty, and shall receive such compensation for his services as the county court may deem reasonable, to be paid out of the county treasury; and should the commissioners not be able to find an eligible site within six miles of the centre thus found by the county surveyor, they shall then fix on the next nearest and most eligible site to the centre, having regard in every instance to the true interest of the county, and particularly to lightening the burthens of the people.

Commissioners may sell real estate, &c.

SEC. 3. *And be it further enacted*, That the said commissioners, or a majority of them, shall, after fixing on the site as aforesaid, have power to dispose of any and all such real estate as they may receive by donation, purchase, or otherwise, so as to promote the interest of the county; and shall further have power and authority to contract for all the necessary public buildings for the said county; shall have the direction of their several constructions, and superintend, reject, or receive the same when completed.

When to meet.

SEC. 4. *And be it further enacted*, That the commissioners aforesaid shall meet at the place of holding courts for the said county, as early as practicable, which shall not exceed the first Saturday in April next, for the purposes aforesaid; and they shall have power to adjourn from time to time, and to such place or places as a majority of them may deem proper: *Provided*, That the said commissioners before entering on their duties, shall take and subscribe the following oath or affirmation before some justice of the peace for said county, to wit: "I, ——— ———, do solemnly swear, (or affirm, as the case may be,) that I will well and truly perform all the duties required of me as commissioner for fixing on the site for the seat of justice for the county of Shelby, pursuant to an act of the Legislature passed for that purpose, to the best of my knowledge and ability, without favour or partiality to men or places: so help me God." Proviso. To take oath.

SEC. 5. *And be it further enacted*, That it shall be the duty of the judge of the county court, and the commissioners of roads and revenue for said county, to fill such vacancies as may occur by the death, resignation, or refusal to act, of any of the commissioners appointed by this act; and should the commissioners, or a majority of them, appointed by this act, or by the judge and commissioners aforesaid, neglect or refuse to meet and enter on their duties in fixing the seat of justice for said county, until the last day of April next, then and in that case, the judge of the county court, and the commissioners of the roads and revenue for the said county, shall be vested with all the powers and authority which the commissioners appointed by this act are vested with, in selecting and fixing on a site for the seat of justice in the said county; and shall be subject to all the restrictions, and shall take the same oath as is required of said commissioners, and shall be entitled to the same remuneration for their services. County court may fill vacancies.

SEC. 6. *And be it further enacted*, That the commissioners appointed by this act, or such as may perform the duties herein required, shall each receive as compensation for their services, one dollar per day for each day they may be necessarily employed in performing that duty; which compensation shall be paid out of any moneys remaining in the county treasury, not otherwise appropriated: *Provided*, that they shall first apply to the clerk of the county court and give in on oath the number of days he or they have been employed as aforesaid, and shall receive a certificate from the clerk to that effect. Commissioners' compensation. Proviso.

SEC. 7. *And be it further enacted*, That Peyton King and John Martin be, and they are hereby appointed additional commissioners for the county of Jefferson, to have, exercise, and perform all and singular the powers and duties belonging to the commissioners appointed by an act of the General Assembly of this state, passed at Huntsville the thirteenth day of December, eighteen hundred and nineteen. Additional commissioners for Jefferson.

COURTS SUPERIOR.—1807.

CHAPTER I.

An Act establishing Superior Courts, and declaring the Powers of the Territorial Judges.*—*Passed in February*, 1807.

Powers and duties of the judges.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the Territorial Judges, and every one of them, shall have power and authority, when and as often as there may be occasion, to issue forth writs of *error*, *certiorari*, and *habeas corpus*, and all other remedial and other writs and process returnable to the supreme court, or either of the circuit courts, or to the district court of Washington, as the case may be, and which are grantable by the judges, by virtue of their office. They shall, in their said courts, hear and determine all causes, matters, and things cognizable in the same; and also hear and determine all, and all manner of pleas, plaints, and causes, which shall be removed or brought there from any court to be holden for the respective counties, and examine and correct all, and all manner of errors of the justices of the inferior courts, in their judgments, process, and proceedings in the said courts, as well in all pleas of the government, as in all pleas, real, personal, and mixed, and thereupon reverse or affirm the said judgments, as the law doth or shall direct. They shall also examine, correct, and furnish the contempts, omissions, and neglects, favours, corruptions, and defaults of all or any of the justices of the peace, sheriffs, coroners, clerks, and other officers within their respective counties: and shall award process for levying, as well of such fines, forfeitures, and amercements, as shall be estreated into the superior courts, as of the fines, forfeitures, and amercements which shall be taxed and set there and not paid, to the uses to which they are or shall be appropriated; and generally, shall minister ample justice to all persons, and amply exercise the jurisdiction and powers herein mentioned, concerning all and singular the premises, according to law.

Limitations of their powers.

SEC. 2.† *Whereas* the government of this territory is instituted for the peace, protection, and happiness of the people thereof; and it being contrary to these objects that any man, or body of men, should have or exercise in any case, an unlimited, arbitrary power to fine and imprison for offences against him or themselves, in any capacity whatever: *And whereas* the trial by jury in all penal, as well as criminal cases, is both a safe and adequate mode of investigation and decision, and should only be suspended in cases of absolute necessity: *Be it enacted*, That no court shall, for any contempt against such court, pass judgment, or decree, order, or inflict, or cause to be inflicted, any fine exceeding the sum of twenty dollars; nor any imprisonment exceeding twenty-four hours, without the trial by jury, to assess the quantity of such fine, and determine the duration of such imprisonment.

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* This act was passed under this title in 1807, but it is really, for the most part, a consolidation of different acts, passed in preceding years.

† The 2d, 3d, 4th, and 5th sections of this act, originally formed a distinct act, which was passed in 1802, under the title of "An Act more effectually to secure the Rights and Interests of the Citizens of this Territory;" and which was substantially borrowed from a Law of the Commonwealth of Kentucky, enacted in 1793.

SEC. 3. *And be it further enacted*, That no judge, or justice of the peace, for any contempt offered to him, shall have power to order and inflict, or cause to be inflicted, any fine exceeding the sum of six dollars, nor any imprisonment exceeding six hours. And if any court, judge, or justice, shall offend herein, the person or persons so offending, shall be deemed guilty of a misdemeanor in office; and shall moreover be subject to the action of the party injured, for damages, to be assessed by a jury. And in all cases of trial by jury for any contempt, the truth of the matter may be given in evidence by the defendant, on the general issue.

SEC. 4. *Provided further*, That the foregoing restrictions are not intended, nor shall they be construed to effect cases arising under the militia laws; nor causes where a party served with process from any court, judge, or justice, shall refuse to answer according to law; or to perform any decree, judgment, or order of the same.

SEC. 5. *And be it further enacted*, That the judges of the superior and inferior courts shall not charge juries with respect to the matters of fact, but may state the testimony, and declare the law.

Territorial judges to be justices of assize, &c.

SEC. 6. *And be it further enacted*, That the said territorial judges shall have power, from time to time, to deliver the jails of all persons who now are, or hereafter shall be committed, for treasons, murders, and other crimes and misdemeanors whatsoever; and for that end, from time to time, to issue forth such necessary precepts and process, and force obedience thereto, as justices of assize, justices of oyer and terminer, and of jail delivery, may or can do within the United States.

Special commissions for the trial of criminal cases.

SEC. 7. *And be it further enacted*, That the governor for the time being be, and he is hereby authorized and required, by and with the advice and consent of two of the legislative council, as often as it shall be found necessary, to issue a commission to the judges of the superior courts of the territory, empowering them, or any two of them, or the judge of the superior court of Washington district alone, in the said district, to hold a court of sessions of the peace, and oyer and terminer, for the trial of offenders, and to hear, try, and determine all crimes and misdemeanors, of what nature or kind soever, wherewith such offenders, or any of them, shall stand charged, and to give judgment and award execution thereon.

Supreme and circuit courts established.

SEC. 8. *And be it further enacted*, That the said territorial judges shall hold at the place which is or may be established by law, for holding the sessions of the general assembly, a court of record, to be called and styled "the Supreme Court* of the Mississippi Territory;" and said judges shall moreover hold a court of record, to be called and styled the "Circuit Court of the county of (naming the county,)" twice in every year; in each of the counties of Wilkinson, Adams, Jefferson, and Claiborne, at the places appointed by law for holding the county courts in the said counties respectively: *Provided, however,* that it shall not be the duty of the judge of the Washington district to attend either of the said courts.

Jurisdiction of the circuit courts.

Sec. 9. *And be it further enacted,* That one or more of the said judges shall hold the said circuit courts for the counties aforesaid respectively; and shall have full jurisdiction therein of all actions and suits, real, personal, and mixed, and causes, matters, and things, arising under the constitution and laws of the United States, and ordinances and laws of this territory, and all things that may be cognizable therein, according to the principles and usages of law, and shall have all the power, authority, and jurisdiction, in the said counties respectively, as justices of assize, *nisi prius*, *oyer* and *terminer*, and jail delivery. And each term of the said circuit courts may be held for the space of twelve judicial days, if business so long continue, and no longer: and in the absence of the judge or judges of any of said circuit courts, the sheriff of the county may adjourn the same from day to day for the space of four days.

Sec. 10. *And be it further enacted,* That no circuit court shall take cognizance of any suit where the sum, or the value of the matter in controversy does not exceed two hundred dollars; but every such suit shall be commenced, tried, and determined, in the county court of the county where the cause of action shall have originated. If any suit shall be commenced in any court for a less sum than such court can legally take cognizance of, or if any person shall demand a greater sum than is due, on purpose to evade this act, in either case the plaintiff shall be nonsuited and pay costs: *Provided always,* that if the plaintiff, or any other person for him, will make an affidavit (to be filed in the clerk's office) that the sum for which the suit shall be brought is really due, but that for want of proof, or that the time limited for the recovery of any article, bars a recovery, then, and in that case, such plaintiff shall have a verdict and judgment for what appears to be legally proved; any thing to the contrary notwithstanding: *And provided also,* that nothing herein contained shall extend, or be construed to extend to suits on bonds, penal bills, or any other action of debt grounded on a penalty, where the balance due on such bond or penal bill, or other action of debt, is not of less value than the sums herein before mentioned, to be limited for bringing suits in the said court.

Where personal and real actions are to be tried.

Sec. 11. *And be it further enacted,* That all civil causes and suits to be instituted for determination before the territorial judges, shall be commenced in the circuit court of the county, in which the defendant may be found, or if it be a real action, an action of ejectment, or trespass *quare clausum fregit*, then in the county in which the cause of action arose; and all causes and actions so commenced in any circuit court, shall be brought to issue, according to the rules that may be ordained and established for the orderly conducting and management of business in the said courts; and if the said issue be an issue in fact, the same shall be tried by the jurors attending the said circuit court, at the next succeeding term, if there be time for trial thereof, and the same be not continued by order of court; and all causes remaining on the docket of any circuit court, at the rising thereof, shall be continued over of course for trial, at the next succeeding term.

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* This court was abolished in 1809, see chapter 2d of this title.

Privileges of freeholders and others.

SEC. 12. *And be it further enacted*, That no freeholder of this territory, shall be sued out of the county of his permanent residence, provided the same be within this territory, unless it be in the actions enumerated in the last section, nor shall any person, who may reside in this territory, be held to bail if sued out of the district or county of his residence and freehold.*

Sections 13, 14, and 15, will be found under the head of "Joint Obligors," chapter 1.

SEC. 16. *And be it further enacted*, That all offences against the laws of this territory, committed within the limits of the same, on lands to which the Indian claim has not been extinguished, shall be cognizable in the superior court of the county or district to which the offender may be brought.

Jurisdiction of offences committed on Indian lands.

Certain points removeable into the supreme court.

SEC. 17. *And be it further enacted*, That the said courts, and each of them, may grant judgment according to the principles and usages of law, in all cases cognizable before them, and award execution, directed to the sheriff or other proper officer of any county in this territory, which shall be executed and returned according to the commands thereof: *Provided*, that in civil causes, demurrers, points reserved at the trial, cases stated, special verdicts, motions in arrest of judgment, and motions for new trials, may, at the discretion of the judge or judges of the circuit court, and shall, at the instance of either party, be heard and determined in the aforesaid supreme court, at their next succeeding term.

Regulations as to criminal cases.

SEC. 18. *And be it further enacted*, That at each of the said circuit courts, a grand jury of a competent number of good and lawful men of the county for which such court is held, shall be returned and empannelled agreeably to law, who shall inquire and true presentments make of all crimes, offences, and misdemeanours committed in their county: and thereupon, the judge or judges of the said circuit court is or are hereby empowered, authorized, and required, to try all offenders so presented, and upon legal conviction by a jury, or on confession of guilt in open court, to proceed to judgment and award execution thereon as the law directs: *Provided*, that the judge or judges of the circuit court may, at his or their discretion, on a point reserved, motion in arrest of judgment, or for a new trial, in any criminal case, respite the judgment or sentence, and reserve such point or motion for the consideration of the supreme court, at their next succeeding term; and in such case the supreme court shall pronounce judgment, sentence, or decree, as the law directs, and award execution accordingly.

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* But he may be sued in any county if oath be made that he hath gone from his own county for the purpose of avoiding service of process. See an Act passed in 1818 under title "Judicial Proceedings."

[SEC. 19 provides for the appointment of circuit court clerks, and is obsolete.

SEC. 20 gives to the judges of the supreme court, power to determine all causes brought before them by writ of error, all demurrers, points reserved at the trial, cases stated, special verdicts, motions in arrest of judgment, and for new trials, reserved for their consideration at any circuit court.

SEC. 21 authorizes trials in the supreme court and special juries.

SEC. 22 gives power to the supreme court to establish rules, &c.

SEC. 23 requires circuit court clerks to attend the supreme court with records, memorandums of judgments, &c.

SEC. 24 relates to the appointment of a clerk, &c.

SEC. 25 relates to the duties of the attorney general.

SEC. 26 vests the same power in the superior court of Washington district, as belonged to the circuit courts of the other counties.

SECTIONS 27, 28, and 29, relate to the appointment of a clerk, and to court days in the several counties; section twenty-nine to the style of writs. All these sections are omitted as repealed or obsolete.

SECTIONS 30 to 38 will be found under the title 36 "Judicial Proceedings at Common Law," chapter 1.]

Duty of the clerk on appeals and writs of error.

SEC. 39. *And be it further enacted*, That when any appeal shall be granted by any court, or any writ of error be directed to the same, the clerk of such court shall immediately make up a full and perfect record of all the proceedings in such cause, and shall, on the application of either of the parties, give an attested copy of such record, with a taxation of all costs which have accrued, to the appellant or plaintiff in error, if required; and shall endorse on such copy the day or days on which the same may have been demanded, and the day on which it shall be delivered, and sign his name as clerk thereto: and if by reason of the delay of any clerk, any transcript shall not be filed in time, or that the record is so erroneously or incorrectly made up, that the superior or supreme court cannot proceed thereon; such clerk shall, in either of the said cases, upon trial and conviction, be adjudged guilty of a misbehaviour in office, and shall forfeit and pay to the person entitled to such attested copy, the sum of two hundred dollars, to be recovered by action of debt, in any court having cognizance thereof, and shall be further liable to an action on the case for all damages which such person may sustain for want of such copy: *Provided alawys*, that if the judge or judges of the superior or

Penalty for neglect.

supreme court, should be of opinion that there appears to be sufficient matter of substance in the transcript of the record and proceedings on any appeal or writ of error, to enable them to proceed thereon, the same shall not be dismissed for want of form; any thing herein contained to the contrary notwithstanding.

SEC. 40. *And be it further enacted*, That the clerk of any superior court, upon receiving a transcript of the record and proceedings in any suit, on which an appeal shall be made or writ of error allowed, shall give a receipt to the person delivering the same, and shall immediately endorse thereon the day on which it shall be delivered; and if he receive it fifteen days before the commencement of the term of the next superior court of which he is clerk, he shall enter it upon the docket of causes for trial, and deliver to the parties such summonses for their witnesses as they may require:—but if such transcript be not delivered to such clerk before fifteen days previous to the next succeeding term, then the clerk shall enter the cause on the reference docket of such court. And if the clerk of any superior court shall refuse, neglect, or omit to do any of the duties which he is hereby required to perform, such clerk shall, upon trial and conviction, be deemed guilty of a misbehaviour in office, and shall forfeit and pay to the appellant or plaintiff in error two hundred dollars, to be recovered by action of debt in any court having cognizance thereof, and be further liable to an action on the case, for all the damages which such appellant or plaintiff in error may sustain by reason of such refusal, neglect, or omission.

Execution may be staid in certain cases.

SEC. 41. *And be it further enacted*, That when in any county or circuit court, or in the superior court of Washington district, judgment upon a verdict in a civil action shall be entered, execution may, on the motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as they may judge proper, be stayed thirty days from the time of entering judgment, in any county or circuit court, and forty days in the superior court of Washington district, to give time to the party making such motion, to apply for a writ of error.

The courts to make rules relating to writs of error.

SEC. 42. *And be it further enacted*, That the said supreme court, and the said superior court for the district of Washington, may ordain and establish all necessary rules respecting the granting, issuing, returning, and hearing of writs of error, so that no writ of error shall be a *supersedeas*, nor any *supersedeas* be granted, of any judgment in civil cases, unless the plaintiff or plaintiffs in error, first enter into bond with good and sufficient security to the adverse party, conditioned for the payment of the said judgment, damages, interest, and costs, in case such judgment shall be affirmed, and also for performing the sentence, judgment, or decree, which the supreme or superior court may render therein: and the supreme or superior court shall render such judgment or decree therein, as the inferior court ought to have done, and award execution accordingly.

[Sections 43 to 48, under "Judicial Proceedings in Chancery." Chap. 1.

Section 49 prescribes the oaths of clerks, but is superseded by the act of 1811.]

Clerks to make complete records.

SEC. 50. *And be it further enacted*, That it shall be the duty of every clerk of the several courts in this territory, within three months after the final determination of any suit or prosecution, to make up and enter in well-bound books, to be kept by him for that purpose, a full and complete record of all the proceedings in such suit or prosecution; and every clerk who shall fail to make and enter a record as aforesaid, shall forfeit and pay the sum of twenty dollars, to be recovered before any court having jurisdiction thereof, and applied to the use of the territory. And in order to secure a due execution of the duty hereby required, the several parties to the suits or prosecutions, shall at all times have a right to inspect said books and records of the court, in the presence of the clerk, in order to see if the records of the suit to which he is a party, hath been duly made up according to the directions of this act; and the clerks shall show the said books and records accordingly, under the penalty of fifty dollars, to be recovered and appropriated to the use of the party so applying and refused.

Extract from an Act concerning Juries.—*Passed February* 6, 1807.

SEC. 12. *And be it further enacted*, That a special session of any circuit or superior court, may be held by order of the judge or judges of the same, whenever it may be necessary for the trial of criminal causes.

CHAPTER II.

An Act to abolish the Supreme Court of the Mississippi Territory.—*Passed December* 22, 1809.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the circuit courts heretofore established by law for the several counties of the territory, shall hereafter be called and known by the names of "Superior Court of Law and Equity,"* for the counties of Madison, Claiborne, Jefferson, Adams, Wilkinson, and Amite, and the said superior courts of law and equity in their several counties respectively, shall have, possess, and exercise all the powers and jurisdiction, both in law and equity, as heretofore exercised by the supreme court of the Mississippi Territory, and the several circuit courts thereof; *Provided*, That nothing in this section contained, shall be construed to make void any process now issued from, and not returned to the several circuits in the territory, but the same shall be returned and filed in the said superior court of law and equity, established in that county, and be as legal and valid as though the same had been returned to the heretofore circuit court of the said county.

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* This denomination of the courts was extended at the next session to the counties of Baldwin, Washington, and Wayne, but as there is no part of the act now in operation, it was deemed unnecessary to insert it.

[Sections 2, 3, 4, 5, and 7, provide for the transfer of papers, the return of process, and may be considered obsolete.]

Sec. 6. *And be it further enacted*, That the supreme court of the Mississippi Territory, as heretofore established by law, is hereby abolished, any law or custom to the contrary thereof notwithstanding.

CHAPTER III.

An Act granting original Jurisdiction to the Judges of the Superior Courts in certain cases.—*Passed December* 18, 1811.

Original jurisdiction.

Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, That the judges of the superior courts shall, after the passage of this act, have original jurisdiction, where a majority of the justices of the county court are indebted to any person or persons, or where any person or persons are indebted to a majority of the justices of the county court, and it shall be the duty of the clerk of the superior court to issue his writ accordingly, any law to the contrary notwithstanding.

CHAPTER IV.

An Act to regulate the several Courts in this Territory, and to create a Supreme Court of Errors and Appeals.—*Passed January* 20, 1814.

Supreme court of errors and appeals, where and by whom, and when to be held, and how long.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the territorial judges appointed, or hereafter to be appointed, in pursuance of the ordinance for the government of this territory, shall hold at the court-house in Adams county, twice in every year, on the second Mondays of June and December, a court of record, to be styled "The Supreme Court of Errors and Appeals;" which court shall be held by two at least of the said judges, but one judge may adjourn the same from day to day, for the space of four days, and shall continue to sit at each term, until all the business is disposed of: *Provided, however*, That it shall not be the duty of the judge of the district of Washington, or the judge of Madison county, to attend said court.

Jurisdiction of superior courts extended.

Sec. 2. *And be it further enacted*, That in addition to the power, authority, and jurisdiction, already given and belonging to the several superior courts of law and equity in this territory, and to the superior court of Madison county, they and each of them shall have exclusive jurisdiction and cognizance of all actions and suits, in which the value of the matter in controversy shall exceed fifty dollars, any law or usage to the contrary

Proviso, as to attorney's fee.

notwithstanding; *Provided, however*, That for sums under two hundred dollars, the attorney's fee shall be the same as in the county court.

[SEC. 3 Provided for the transfer of causes from the county to the superior courts.]

Powers of judges of supreme court.

SEC. 4. *And be it further enacted*, That the judges of the supreme court of errors and appeals, and each of them, shall have power and authority to issue forth writs of error, to the several superior courts of law and equity, to remove any judgment or decree, either at common law, or in chancery, into the said supreme court of errors and appeals; and also writs of *certiorari*, *habeas corpus*, and all remedial and other writs and process, properly allowable by a judge of the supreme court of errors and appeals, returnable to the same; and the said supreme court of errors and appeals shall hear and determine all manner of pleas, plaints, and causes, both at law and in equity, which shall be removed, and brought before it, from any of the superior courts of law and equity, and all causes, matters, and things, cognizable in the same, but no cause shall be removed into the said supreme court of errors and appeals, until after final judgment in the court below, except where the judge or judges in the said court below shall doubt as to the law, or rule of decision; and in that case, he or they may respite the final judgment, and refer the question to the said supreme court of errors and appeals for their determination; and if the point or question does not appear on the record, it shall be the duty of the judge in the court below to state the same in writing, and send it with the other proceedings in the cause, to the said supreme court of errors and appeals, who shall have power and authority to grant judgment thereon, according to the right of the matter, and award execution, except it be necessary in consequence of the determination of the said supreme court of errors and appeals, that facts be ascertained, or damages assessed by a jury, in which case the cause shall be remanded to the court from whence it was brought.

Writs of error, in what manner to be granted.

SEC. 5. *And be it further enacted*, That no writ of error shall be allowed by any of the judges of the supreme court of errors and appeals, unless he shall be of opinion from an inspection of the record, judgment, or decree, that there is good cause to reconsider the said judgment or decree, and no writ of error shall operate as a *supersedeas*, nor shall any supersedeas be granted of any judgment, unless the plaintiff or plaintiffs in error, first enter into bond with good and sufficient security, to be approved of by the judge granting the writ, to the adverse party, conditioned for the payment of the judgment, damages, interest, and costs, in case such judgment shall be affirmed, and also for the performing the sentence, judgment, or decree, which the supreme court of errors and appeals may render therein; and in case the said supreme court of errors and appeals shall affirm entirely any judgment, or decree brought before them, the plaintiff in error, if he be the defendant below, shall pay to the defendant in error, ten per centum damages on the amount due, with interest from the time of rendering the original judgment or decree.

Bill of exceptions may be allowed.

SEC. 6. *And be it further enacted*, That if in the trial of any cause, either the plaintiff or defendant shall think himself aggrieved by the direction or decision of any judge or judges of any of the courts in this territory, the party so considering himself aggrieved, may in person, or by his counsel, tender to the judge or judges giving such direction or decision, a bill of exceptions to his or their opinion, stating the points wherein he is supposed to err, and the said judge or judges shall be bound to sign and seal the same, and the said bill of exceptions so signed and sealed shall be made and considered a part of the record in the cause, and in case the said judge or judges shall refuse to sign and seal the said bill of exceptions, if the facts therein are truly stated, he shall be deemed guilty of a high misdemeanour in office.*

The fourth and fifth sections are modified in the following act, passed in December, 1814. Sections 7, 8, 9, and 10 provided for the appointment of a clerk, the attendance of a sheriff, the transfer of writs of error from the Superior Court of Adams county to the Supreme Court, and the times of holding courts.

SEC. 11. *And be it further enacted*, That all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.†

CHAPTER V.

CONSTITUTION OF THE STATE OF ALABAMA.

ARTICLE V.

JUDICIAL DEPARTMENT.

SEC. 1. The judicial power of this state shall be vested in one supreme court, circuit courts to be held in each county in the state, and such inferior courts of law and equity, to consist of not more than five members, as the General Assembly may, from time to time direct, ordain, and establish,

SEC. 2. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: *Provided*, that the supreme court shall have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs, as may be necessary to give it a general superintendence and control of inferior jurisdictions.

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* Other provisions with regard to writs of error and appeals, will be found under the title 36 of "Judicial Proceedings."

† A subsequent act, passed the twenty-second of January, 1814, continued for one year the original jurisdiction before exercised by the county courts, in the counties of Green, Wayne, Washington, Clarke, Baldwin, Mobile, Jackson, and Hancock.

SEC. 3. Until the General Assembly shall otherwise prescribe, the powers of the supreme court shall be vested in, and its duties shall be performed by, the judges of the several circuit courts within this state: and they, or a majority of them, shall hold such sessions of the supreme court, and at such times, as may be directed by law: *Provided*, that no judge of the supreme court shall be appointed before the commencement of the first session of the General Assembly, which shall be begun and held after the first day of January, in the year one thousand eight hundred and twenty-five.

SEC. 4. The supreme court shall be holden at the seat of government, but may adjourn to a different place, if that shall have become dangerous from an enemy or from disease.

SEC. 5. The state shall be divided into convenient circuits, and each circuit shall contain not less than three, nor more than six counties: and for each circuit there shall be appointed a judge, who shall, after his appointment, reside in the circuit for which he may be appointed.

SEC. 6. The circuit court shall have original jurisdiction in all matters civil and criminal within this state, not otherwise excepted in this constitution; but in civil cases, only when the matter or sum in controversy exceeds fifty dollars.

SEC. 7. A circuit court shall be held in each county in the state, at least twice in every year, and the judges of the several circuit courts may hold courts for each other, when they may deem it expedient, and shall do so when directed by law.

SEC. 8. The General Assembly shall have power to establish a court or courts of chancery with original and appellate equity jurisdiction; and until the establishment of such court or courts, the said jurisdiction shall be vested in the judges of the circuit courts respectively. *Provided*, that the judges of the several circuit courts shall have power to issue writs of injunction, returnable into the courts of chancery.

SEC. 9. The General Assembly shall have power to establish in each county within this state a court of probate, for the granting of letters testamentary and of administration, and for orphans' business.

SEC. 10. A competent number of justices of the peace shall be appointed, in and for each county, in such mode, and for such term of office, as the General Assembly may direct. Their jurisdiction in civil cases shall be limited to causes, in which the amount in controversy shall not exceed fifty dollars. And in all cases tried by a justice of the peace, right of appeal shall be secured under such rules and regulations as may be prescribed by law.

SEC. 11. Judges of the supreme and circuit courts, and courts of chancery shall, at stated times, receive for their services a compensation which shall be fixed by law, and shall not be diminished during their continuance in office: but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this state, the United States, or any other power.

SEC. 12. Chancellors, judges of the supreme court, judges of the circuit courts, and judges of the inferior courts, shall be elected by joint vote of both houses of the General Assembly.

CHAPTER VI.

An Act to regulate the Proceedings in the Courts of Law and Equity in this State.—*Passed December* 14, 1819.

State divided into five judicial circuits.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, this state shall be, and hereby is, divided into five judicial circuits, whereof the counties of Mobile, Baldwin, Washington, Clarke, Monroe, and Conecuh, shall compose the first circuit; the counties of Henry, Butler, Wilcox, Dallas, Autauga, and Montgomery, shall compose the second circuit; the counties of Marengo, Greene, Perry, Cahawba, Tuskaloosa, and Jefferson, shall compose the third circuit; the counties of Limestone, Lauderdale, Franklin, Lawrence, and Marion, shall compose the fourth circuit; and the counties of Blount, Shelby, St. Clair, Cotaco, Jackson, and Madison, shall compose the fifth circuit.*

The second section related to the times of holding courts, which have been altered by the act of eighteen hundred and twenty-one.

Circuit courts holden by one judge.

SEC. 3. *And be it further enacted,* That the circuit courts, shall be holden by one judge, who shall have been elected or appointed, and qualified, in manner and form prescribed by the constitution; and shall have cognizance, and legal jurisdiction of all pleas, real, personal, and mixed; and also of all suits and demands, relative to legacies, filial portions, and estates of intestates; all pleas of the state, and criminal matters, of what nature, degree, or denomination soever, whether brought before them by original or mesne process, or by *certiorari,* writ of error, appeal from any inferior court, or by any other ways or means whatsoever: and the circuit courts are hereby declared to have as full power and authority to give judgment, and to award execution, and all other necessary process thereupon, as heretofore belonged to the superior courts of law and equity in the territory; and to have, use, exercise, and enjoy, the same powers and authorities, rights, privileges, and pre-eminences, as were had, used, exercised, and enjoyed, by the said superior courts heretofore: except where it is otherwise directed by this or some other act, or where such authorities, rights, privileges, or pre-eminences, or any of them, may be inconsistent with, or repugnant to, the present form of government.

Powers, &c.

Exceptions.

[SEC. 4, 5, 6, and 7, will be found under the title of "Judicial Proceedings at Common Law."]

Circuit judges,

SEC. 8. *And be it enacted,* That when the circuit judges shall have been elected, in manner prescribed by the constitution, they shall be commissioned by the governor, and shall hold the circuit courts at the times and places, in this act mentioned, and shall reside within the circuit to which they may be severally elected; and in case of the removal of any such judge out of the circuit to which he is elected, his office shall be vacated thereby: *Provided*, That nothing in this act contained, shall be so construed as to prevent the interchange of ridings by such judges in their several circuits, in the manner hereafter pointed out; that is to say, the judges holding the courts aforesaid shall so alternate that no one judge shall hold the courts of the same circuit, for two courts in succession, unless called on to do so by the judge, whose duty it may be to hold such circuit, on account of sickness, or other inability to attend.

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* The Act of eighteen hundred and twenty-one increases the number of circuits.

to interchange.

Clerk to certify copy of record.

SEC. 9. *And be it further enacted*, That when the clerk of any circuit court shall give a certified copy of any decree, judgment, record, or proceeding of any superior court of law and equity, heretofore existing, the papers and records of which may be delivered to him, pursuant to the directions of this act, the same faith and credit shall be given to such certified copy, as to a certified copy of any record, or proceeding of the circuit court, to which such clerk may belong; and it shall be the duty of the clerks of said superior courts of law and equity, to transfer all the proceedings, suits, and causes, within the same, to the circuit courts of the respective counties, in which such superior courts have been holden: and all process heretofore issued, or which may be hereafter issued, returnable to the superior courts previous to the commencement of the first terms of the circuit courts, within their respective circuits, shall be returned to the first term of said circuit courts respectively.

Process returnable to superior courts, to be returned to circuit courts.

Sheriffs of counties to be sheriffs of circuit courts.

SEC. 10. *And be it further enacted*, That the sheriffs of the different counties shall be the sheriffs of the circuit courts within their respective counties, and the sheriff of the county, in which the supreme court shall be holden, shall also be the sheriff of the said supreme court.

Jails of counties to be jails of circuit courts.

SEC. 11. *And be it enacted*, That the common jail of each county shall be the jail of the circuit court for the said county: *Provided, however*, That nothing in this act contained, shall be so construed as to prevent civil officers, judges, justices, &c. from transferring prisoners to the nearest jail which is good and sufficient, when the jail of the county where such prisoner may be arrested shall be considered insufficient.

Change of venue.

SEC. 12. *And be it enacted*, That judges of the circuit courts within their respective circuits, at or before the first trial term of any suit, civil or criminal, shall have power to change the venue thereof, on good and sufficient cause, set forth and duly supported by oath or affirmation; and when a change of venue shall be allowed in any suit, the trial thereof shall be adjourned under the direction of the judge, to the nearest adjoining county, which is free from the like exception, and the trial of such cause in the court to which it may be adjourned, shall be by a jury of freeholders, or householders: *Provided*, That such change of venue shall in no instance be allowed, more than once in the same cause or suit: *Provided also*, That in criminal prosecutions the right to the change of venue under the provisions of this section, shall be confined to the party prosecuted.

Proviso.

SEC. 13. *And be it enacted*, That the judges of the circuit courts within their respective circuits, shall set apart a particular day or particular days of each term, for the trial of criminal causes, and all fines inflicted and forfeitures accruing in the several circuit courts, shall go to, and be applied to the use of the county in which they may be thus inflicted, or shall accrue; and the said judges, at their discretion, shall have power on the application of any person charged with a criminal offence, to hold a special session for the trial of such person; and the said judges shall direct the sheriff of the county in which such special session shall be holden, to return thereto twenty-four persons properly qualified to serve as jurors, who shall be selected in the manner now prescribed by law in such cases, any or all of whom failing to attend, or being challenged or set aside, a jury of the bystanders shall be empannelled for the trial of the cause.

Certain days to be set apart for trial of criminal causes.

SEC. 14. *And be it enacted*, That the clerks of the several circuit courts shall give bond with security, payable to the governor and his successors in office, in the penalty of ten thousand dollars, for the safe keeping of the records and the faithful discharge of the duties of his office, which said bond shall be lodged in the office of the secretary of state, and may be put in suit on the assignment of the governor, by the party or parties injured, in his, or their own name, and shall not become void upon the first recovery, but may from time to time be put in suit by action of debt, until the whole penalty be recovered; and if it shall be discovered that any of the said clerks shall have violated the oath prescribed by the constitution, or willingly or corruptly have done any thing contrary to the true intent and meaning of the same, such clerk shall be deemed upon conviction, guilty of misbehaviour in office, and shall be removed thereform, and shall for ever be incapable of holding any office civil or military in the state.

Clerks to give bond.

SEC. 15. *Be it enacted*, That the records of the respective courts within this state, for each preceding day of every session, shall be read in open court on the morning of the succeeding day, except on the last day of the term, on which day they shall be signed by the judge or judges presiding in said court.

Records of courts to be read in open court.

SEC. 16. *Be it enacted*, That either party may appeal from any final judgment or decree of any circuit court during the term at which the judgment or decree was rendered, to the supreme court, upon entering into bond with security to be approved of by the court, in double the amount of the debt or damages in such, his, or their suit for prosecuting the same with effect, or performing the judgment, sentence, or decree which the supreme court shall pass or make thereon, in case the appellant shall have the cause decided against him; and the

Appeals from circuit court.

appellant shall file a transcript of the record with the clerk of the supreme court on or before the third day of the first term of said supreme court after the appeal was granted, and on failure thereof the appeal shall be dismissed with costs and damages, upon the appellee's producing a certificate from the clerk of the circuit court of the amount of the judgment or decree, and that bond had been executed according to the order of the court granting the appeal: *Provided*, That for good cause shown, the appeal may be reinstated any time during the term, upon payment of costs.

[Sections 17 and 18, relate to equity jurisdiction, and will be found under the head of "Chancery Proceedings."]

Judges of circuit courts to hold supreme court.

SEC. 19. *And be it enacted*, That the supreme court for this state, both in law and equity, shall be held by, and the powers of the same shall be vested in, and its duties shall be performed by the judges of the several circuit courts; and they, or a majority of them, shall hold the sessions of said court at Cahawba, twice in each and every year: the first session to begin on the second Monday in May, and the second session to begin on the second Monday in November;* and the said court shall continue to hold their sessions until the business thereof be completed, or the judges, or a majority of them, may deem it expedient and necessary to rise, for the purpose of attending to their respective circuit courts; and the said sessions of the supreme court shall be holden on the same days in each and every year, until otherwise by law directed. And the said judges shall at their first session, appoint one of their own body chief justice of the supreme court, which appointment shall be entered of record; and in case of his absence at any succeeding time, one of the judges present shall be appointed chief justice *pro tempore*, and all orders of the court shall be signed by him: *Provided always*, That one judge, or if no judge appears, the sheriff may adjourn the court from day to day, until a sufficient number of judges appear to constitute a court, if that shall be before the sixth day of the term; at which time, if a sufficient number of judges do not appear to form a court, the judge or sheriff (as the case may be,) shall adjourn the court to the next stated term, to which term all cases shall stand continued.

Sheriff to adjourn the court from day to day until judges appear.

Writs of error to lie from courts of error, and appeals to circuit courts.

SEC. 20. *And be it enacted*, That writs of error shall lie from the courts of errors and appeals, to the respective circuit courts throughout the state; and it shall be the duty of the judges, or any one of them, on application either in vacation or term-time, to grant such writ of error, and to take good and sufficient security from the party demanding the same, that the said party shall prosecute his writ to effect, and answer all damages and costs if he fails to make his plea good: and in all cases bottomed on a contract, note, agreement, or liquidated account, where the judgment of the circuit court may be affirmed, fifteen per cent. damages shall be allowed the party in whose favour judgment was awarded in the court below.

Party demanding writ of error to give security.

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* Times of holding supreme court since altered.

Sec. 21. *And be it further enacted*, That when any judgment, decision, or decree of the circuit court shall be reversed or affirmed in the court of errors and appeals, it shall be the duty of said court to pass such judgment, decision, or decree, as the circuit court should have passed, except where the damages to be assessed, or matter to be decreed, are uncertain; in which case the said court shall remand the same for final hearing.

Judges of the court of appeals and circuit judges shall file their opinions in writing.

When a writ of error is allowed, clerk compelled to send the opinion of circuit judge to the court of appeals.

Sec. 22. *And be it enacted*, That the judges of the courts of errors and appeals, as well as the circuit court judges, shall, as to the decisions on all material points, file their opinions in writing, among the papers of the cause in which such opinion may be given, within ten days after such opinion may be delivered: and when a writ of error shall be allowed, to reverse the judgment of any circuit court in any cause, the clerk thereof shall send a transcript of the opinion of the judge to the court of errors and appeals, as a part of the record of the cause, properly certified.

Duty of judges of the court of appeals to establish rules.

To establish a uniform practice in all courts of record in this state.

Sec. 23. *And be it enacted*, That it shall be the duty of the judges of the court of errors and appeals, at the first term of said court, or as soon thereafter as may be practicable, to ordain and establish rules and regulations, for the government of the proceedings and practice in said court; also to establish a regular and uniform practice throughout all the courts of record in this state: *Provided however*, That the rules prescribed for the government of the circuit court, shall be in force, and govern the proceedings of the supreme court, until the said judges of the supreme court shall establish such other rules as are by this act directed.

All causes in general court to be transferred to the court of appeals.

Writs issued to general court, returnable to the court of appeals.

Sec. 24. *And be it enacted*, That all causes under the jurisdiction of this state, now pending in the general court of the territorial government, be, and the same are hereby transferred to the court of errors and appeals; and that it shall be the duty of the clerk of the said court, to certify and transfer the same accordingly to the said court of errors and appeals, at the first session thereof, at the town of Cahawba. And the supreme court aforesaid shall proceed to hear and determine all such causes, except those which exclusively belong to the courts of the United States; and all writs of error, which have heretofore issued, or may hereafter issue, returnable to the general court, shall be returned to the first term of the supreme court, as in other cases.

Judges to appoint a clerk.

Sec. 25. *And be it enacted*, That it shall be the duty of the said judges, at the first session of the said courts of errors and appeals, to appoint a clerk, to continue in office for the term of four years from and after the time of his appointment, and shall conform to the same regulations, and perform the same duties of office, in the same manner, and under the same penalties as to the clerks of the circuit courts, are by this act directed.

Note.—The subsequent sections of this Act will be found under the title of "Inferior Courts," to which the reader is referred, as there are some regulations with regard to Clerks, Jurors, &c. which will apply to the circuit courts as well as the county courts, though they are blended together.

CHAPTER VII.

An Act to alter and enlarge the Terms of certain Circuit Courts in this State.—*Passed December 21, 1820.*

Circuit courts, when holden.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the circuit court in the county of Madison shall commence on the first Mondays in February and September, and the term shall be three weeks each; in the county of Jackson on the fourth Mondays in February and September, and the terms shall be one week each; in the county of Cotaco on the first Monday in March, and the first Monday after the fourth Monday in September; in the county of Blount on the second Monday in March, and the second Monday after the fourth Monday in September; in the county of St. Clair on the third Monday in March, and the third Monday after the fourth Monday in September; in the county of Shelby on the fourth Monday in March, and the fourth Monday after the fourth Monday in September; in the county of Limestone on the second Mondays in March and October, and each term shall be two weeks; in the county of Lawrence on the fourth Mondays in March and October, and each term shall be two weeks; in the county of Lauderdale on the second Mondays after the fourth Mondays in March and October; in the county of Franklin on the third Mondays after the fourth Mondays in March and October; in the county of Marion on the fourth Mondays after the fourth Mondays in March and October; in the county of Pickens on the fifth Mondays after the fourth Mondays in March and October.

SEC. 2. *And be it further enacted,* That the circuit courts in the county of Montgomery, shall be held on the second Mondays in February and August; in the county of Autauga on the third Mondays in February and August; in the county of Dallas on the fourth Mondays in February and August, and may continue in session two weeks; in the county of Wilcox on the second Mondays in March and September; in the county of Butler on the third Mondays in March and September; in the county of Henry on the fourth Mondays in March and September.

SEC. 3. *And be it further enacted,* That the circuit courts in the county of Conecuh, shall hereafter be held on the third Mondays in March and September; in the county of Monroe on the fourth Mondays in March and September, and may continue two weeks; in the county of Clarke on the second Mondays in April and October, and may be held two weeks; in the county of Washington on the fourth Mondays in April and October, and may continue two weeks; in the county of Baldwin on the second Mondays in May and November; and in the county of Mobile on the third Mondays in May and November.*

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* Boundaries altered in chapter 10.

SEC. 4. *And be it further enacted,* That from and after the passage of this act, the term of the supreme court shall commence on the second Mondays in June and December, in each and every year.

Supreme court, when holden.

SEC. 5. *And be it further enacted,* That all process now or hereafter made returnable to any of the said courts, at the first term thereof by the present law, shall be returned to the first term of said courts, as changed by this act, and shall be proceeded on as though made returnable thereto.

Process, when returnable.

SEC. 6. *And be it further enacted,* That all laws and parts of laws contravening the provisions of this act, be, and the same are hereby repealed.

[Section 7 also provides for an election in Pickens county.]

And be it further enacted, That the inferior court for said county shall commence on the fourth Monday in February, May, August, and November.

[Section 8 relates to the Militia of Pickens county.]

SEC. 9. *And be it further enacted,* That the county courts in the county of Dallas, shall hereafter be holden on the first Mondays in February, May, August, and November, and that this section of this act shall commence and be in force from and after the first day of January next.

Dallas county court.

SEC. 10. *And be it further enacted,* That in all jury trials, either party may and shall have the rights to peremptory challenge of four of the jury.

Challenge of jury.

SEC. 11. *And be it further enacted,* That hereafter it shall and may be lawful to try offenders by indictment in all cases which are now required by law, to be tried on presentment.

Offenders to be tried on indictments.

SEC. 12. *And be it further enacted,* That hereafter, each and every grand juror, and juror of the original pannel, shall be entitled to receive one dollar for each and every day he may serve as such, and mileage as heretofore allowed; which shall be paid out of any moneys in the county treasury on the certificate of the clerk, of his having served as such; and in case there should be no funds in the county treasury for the payment of such demands, the certificate of such juror shall be receivable by the collector of taxes for county purposes, in their respective counties.

Compensation of jurors.

CHAPTER VIII.

An Act giving Jurisdiction to the Courts of certain Counties.—*Passed December 20, 1820.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the circuit court of Cotaco, shall have jurisdiction, and the county shall embrace all that tract of country lying west of Willstown valley, and belonging to the Cherokee nation of Indians. And the county of St. Clair shall embrace all the tract of country belonging to the Cherokee nation of Indians in Willstown valley, and east of the same.

Cotaco extended.

Expenses of prosecuting paid by the state.

SEC. 2. *And be it further enacted*, That the expenses of prosecuting and supporting criminals who are prosecuted for offences committed on Indian lands, shall be paid out of the contingent fund, upon a certificate of the judge, made out as in cases now provided for by law.

SEC. 3. *And be it further enacted*, That all acts and parts of acts contravening this act, shall be, and the same are hereby repealed.

CHAPTER IX.

An Act to amend an Act giving Jurisdiction to certain Counties therein named, over that part of the Cherokee Lands, lying within the Limits of the State of Alabama.—*Passed November* 27, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the circuit court of Jackson shall have jurisdiction, and the county shall embrace all that tract of country lying west of Willstown valley, and east of the road leading from Ditto's landing on Tennessee river to Blountsville.

SEC. 2. *And be it further enacted*, That all acts and parts of acts, coming within the purview and meaning of this act, are hereby repealed.

CHAPTER X.

An Act to form a Sixth Judicial Circuit, and for other purposes therein mentioned.—*Passed December* 13, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That this state be, and is hereby divided into six judicial circuits, to be arranged as follows.

The first judicial circuit shall be composed of the counties of Monroe, Clarke, Washington, Mobile, Baldwin, and Marengo. The counties of Dallas, Wilcox, Perry, Bibb, and Autauga, shall compose the second judicial circuit. The counties of St. Clair, Shelby, Jefferson, Tuskaloosa, Greene, and Blount, shall compose the third judicial circuit. The counties of Pickens, Limestone, Lauderdale, Lawrence, Franklin, and Marion, shall compose the fourth judicial circuit. The counties of Jackson, Decatur, Madison, and Morgan, shall compose the fifth judicial circuit. The counties of Covington, Henry, Pike, Montgomery, Conecuh, and Butler, shall compose the sixth judicial circuit.

SEC. 2. *And be it further enacted*, That the circuit courts of the first judicial circuit shall hereafter be held at the times following, in each and every year, to wit: in the county of Monroe on the first Mondays in April and October, to continue in session two weeks. In the county of Clarke on the third Mondays in April and October. In the county of Marengo on the fourth Mondays in April and October. In the county of Washington on the first Mondays after the fourth Mondays in April and October, to continue in session two weeks. In the county of

Monroe.

Clarke.

Washington.

Mobile.

Mobile on the third Mondays after the fourth Mondays in April and October. In the county of Baldwin, on the fourth Mondays after the fourth Mondays in April and October. That the circuit courts of the second judicial circuit, shall be held at the times following, in each and every year, to wit: In the county of Dallas on the third Mondays in March and September, to continue in session two weeks. In the county of Wilcox, on the first Mondays after the fourth Mondays in March and September. In the county of Perry, on the second Mondays after the fourth Mondays in March and September. In the county of Bibb, on the third Mondays after the fourth Mondays in March and September. In the county of Autauga, on the fourth Mondays after the fourth Mondays in March and September. That the circuit courts of the third judicial circuit shall be held at the times following, in each and every year, to wit: In the county of Greene, on the first Mondays in March and September. In the county of Tuskaloosa on the second Mondays in March and September, to continue two weeks. In the county of Jefferson, on the fourth Mondays in March and September. In the county of Blount, on the first Mondays after the fourth Mondays in March and September. In the county of St. Clair on the second Mondays after the fourth Mondays in March and September. In the county of Shelby, on the third Mondays after the fourth Mondays in March and September. That the circuit courts of the fourth judicial circuit, shall be held at the times following, in each and every year, to wit: In the county of Limestone on the first Mondays in March and September, and to continue in session two weeks. In the county of Lawrence on the third Mondays in March and September, and to continue in session two weeks. In the county of Lauderdale, the first Mondays after the fourth Mondays in March and September, to continue in session two weeks. In the county of Franklin on the third Mondays after the fourth Mondays in March and September, to continue in session two weeks. In the county of Marion on the fifth Mondays after the fourth Mondays in March and September. In the county of Pickens, on the sixth Mondays after the fourth Mondays in March and September. That the circuit courts of the fifth judicial circuit, shall be held at the times following, in each and every year, to wit: in the county of Jackson, on the second Mondays in April and October, and continue one week. In the county of Decatur, on the third Mondays in April and October, and continue one week. In the county of Morgan, on the fourth Mondays in April and October, and continue one week. In the county of Madison, on the first Mondays after the fourth Mondays in April and October, and continue four weeks. That the circuit courts of the sixth judicial circuit, shall be held at the times following, in each and every year, to wit: in the county of Butler on the first Mondays in March and September. In the county of Conecuh, on the second Mondays in March and September. In the county of Covington, on the third Mondays in March and September. In the county

Baldwin.
Dallas.
Wilcox.
Perry.
Bibb.
Autauga.
Greene.
Tuskaloosa.
Jefferson.
Blount.
St. Clair.
Shelby.
Limestone.
Lawrence.
Lauderdale.
Franklin.
Marion.
Pickens.
Jackson.
Decatur.
Morgan.
Madison.
Butler.
Conecuh.
Covington.
Henry.

of Henry, on the fourth Mondays in March and September. In the county of Pike, on the first Mondays after the fourth Mondays in March and September. In the county of Montgomery, on the second Mondays after the fourth Mondays in March and September, and to continue in session two weeks.

Pike.

Montgomery.

The judge of the 6th circuit to be elected, &c. as per constitution.

SEC. 3. *And be it further enacted*, That a circuit judge for the sixth judicial circuit shall be elected, or appointed, and qualified, in manner and form as prescribed by the constitution; and that as a judge of the circuit and supreme courts of the state, he shall receive the same salary, hold his office by the same tenure, and have, exercise, and enjoy the same powers, rights, and privileges, and perform the same duties as appertain to the other judges of the circuit and supreme courts.

SEC. 4. *And be it further enacted*, That all process now, or hereafter made returnable to any of the circuit courts of this state at the first term thereof by the existing laws, shall be returnable to the first term of said courts as changed by this act, and shall be proceeded on as though made returnable thereto.

A solicitor for 6th circut to be appointed.

His salary.

SEC. 5. *And be it further enacted*, That a solicitor for the sixth judicial circuit be elected or appointed in manner and form as prescribed by law and the constitution, and that he receive the same fees and salary, and exercise the same powers, rights, and privileges, and perform the same duties, as appertain and belong to the other solicitors of the state.

Clerk of circuit court of Madison county to draw the names of additional jurors.

SEC. 6. *And be it further enacted*, That it shall be the duty of the clerk of the circuit court of Madison county, to draw the names of twenty persons for jurors, in addition to the number, and in the same manner now required by law, and he shall issue a *venire facias* to the sheriff of said county, requiring him to summon the persons whose names shall be so drawn, to attend on the third Monday of the next term of said court, and until the end of the term, who shall be entitled to the same compensation now allowed to jurors, and who shall serve as petit jurors from the time at which they are so summoned to appear, until the end of the term. And it shall be the duty of the presiding judge, to discharge those jurors who may be summoned to appear on the first day of the term, except such as may be drawn as grand jurors, on the second Saturday of the term.

SEC. 7. *And be it further enacted*, That if at any time it shall happen, that from the period allotted to the several circuit courts of this state, to hold their respective terms, any of the said courts should be unable to get through all the business before their said courts respectively, then and in that case, it shall and may be lawful for the presiding judge to hold an intermediate term for the completion of all unfinished business, to which term a jury shall be summoned to attend, as well as witnesses, whose testimony may be desired before such court.

COURTS INFERIOR.

CHAPTER I.

An Act for the Appointment of Justices of the Peace ,and the Establishment of County Courts.—*Passed in February,* 1807.

[The first ten sections were repealed in December, 1814.]

Select justices to be appointed.

SEC. 11. *And be it further enacted,* That it shall be lawful for the governor to appoint and commission five persons in every county, (one of whom shall be commissioned chief justice of the orphans' court) who shall be justices of the peace and of the quorum, in the counties respectively for which they may be appointed. And the said five justices shall be justices of, and they, or any three of them, may hereafter hold the county court, and orphans' court, of their respective counties: and the said court shall be held twice in every year, in every county within this territory: and each of the said courts may continue to be held six judicial days at each term, and no longer.

(SEC. 12. Repealed in 1809.*)

Testamentary powers.

SEC. 13. *And be it further enacted,* That the said county courts shall have full power and authority to take the probate of wills, and also conveyances of real and other estates, and also to order the same to be recorded in proper books, to be kept for that purpose: and the said courts respectively, shall make orders for issuing letters testamentary, and letters of administration, which letters shall be signed and issued by the clerk of said court, and may by summons, upon application made to them, compel any person or persons whatsoever, within their respective counties having in their possession any will or testament of any diseased person, to exhibit the same to the court for legal probate thereof, and whoever being legally summoned, shall, in contempt of the court, refuse to produce any such will, in his or her possession, or having been in his or her possession, shall refuse to inform the said court upon oath where such will then is, or in what manner he or she hath disposed of the same, such persons shall, by order of court, be committed to the common prison of the county, there to remain without bail or mainprize, until such will shall be produced, and due submission made to the said court for such contempt: and the said court shall, and is hereby empowered, in case of such person's removal, to issue such summons and process for commitment into any county in the territory. And in case that any person shall die intestate, who is a non-resident, or not properly an inhabitant of this territory, it may be lawful for any justice of the county court, at such death, to notify the same to two other justices of the same court, who shall procure some respectable person to take an inventory on oath, of the goods and effects of such deceased person, which goods and effects shall by them be deposited in the hands of some respectable inhabitant of the county, who shall have the entire care and possession of such property, to the intent that such estate may be safely preserved, and kept subject to the order of the next county court, for administration thereon.

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* This section allowed four dollars a day to each of the justices holding court: and imposed a tax of fifty cents on every suit in any court in the territory.

Appeals in testamentary cases.

SEC. 14. *And be it further enacted*, That if any person who shall claim a right to execute any will, or to administer on the estate of an intestate, and shall think himself injured by order of the court for letters testamentary, or of administration, he shall be entitled to an appeal to the superior court of the county or district where such order shall have been made, subject to the same regulations as in other cases of appeal; and such superior court is hereby declared to have cognizance thereof; and shall at their sitting next succeeding such appeal, determine the same, and upon such determination had, such court shall proceed to grant letters to the persons entitled to the same; he or she (if on administration) giving bond with sufficient security, for the faithful discharge of the trust; which bond and proccedings shall be transmitted by the clerk of the said superior court, to the office of the county court from whence the appeal issued, there to be entered and filed with the other testamentary transactions in such office. And for the better preservation of wills and other papers, relative to the estates of deceased persons: *Be it enacted*, that all original wills, inventories, and accounts of executors and administrators, shall remain in the clerk's office, among the records of the respective counties, where the same shall be proved or exhibited; and to the said wills, inventories, and accounts, any person may have free access, except for the time they shall or may be removed before any other court, upon the determination of any controversy.

County courts to have care of orphans.

SEC. 15. *And be it further enacted*, That the justices of the several county courts in this territory shall have authority, within their respective jurisdictions, from time to time, to take cognizance of all matters concerning orphans and their estates, and to appoint guardians in such cases where to them it shall appear necessary, and shall take good security of all guardians by them to be appointed, for the faithful discharge of the trust committed to them; and shall, during their terms, keep and hold the orphans' court, in pursuance of the act concerning wills and testaments, the settlement of intestate estates, and the duty of executors and administrators.

When and by whom process must be issued.

SEC. 16. *And be it further enacted*, That all original process, and all subsequent process thereupon to bring any person or persons to answer to any action, suit, bill, or plaint, in any court in this territory, (except subpœnas for witnesses, which, in term time may be made returnable immediately,) shall be issued by the clerk of such court, and shall be returnable to the first day of the term, and shall be executed at least five days before the return thereof; and if any person shall take out any writ or process while such court is sitting, or within five days before the beginning of the term; such writ or process shall be made returnable to the term next after that then held or to be held, within five days as aforesaid, and not otherwise: and all writs and process issued, made returnable, or executed in any other manner, or at any other time, than is herein before directed, may be abated upon the plea of the defendant.

To have cognizance in certain civil suits.

Sec. 17. *And be it further enacted*, That the justices of the county courts, during their terms, shall moreover, as justices of the county courts of their respective counties, (except in the county of Washington,) have jurisdiction, and may take cognizance of all actions of a civil nature, in their respective counties, wherein the value of the matter in controversy shall not exceed one thousand dollars, excepting however real actions, actions of ejectment and trespass, *quare clausum fregit*; and the following rules of practice shall be observed in said county courts: the first day of every term shall be a return day, on which the plaintiff shall file his declaration, and the defendant shall plead thereto within the two succeeding days, and the plaintiff reply within the two days then next succeeding; and if rejoinder or further pleading be required, the court may, on application, limit the time therefor, and may, in any case wherein special pleading is necessary, enlarge the time therefor at their discretion, so that the cause be brought to issue before the next succeeding term, and in default of declaring or pleading, a *non pros.* or judgment by default, may be entered; and if such judgment by default be in an action of debt, the same shall be final: but if a writ of inquiry be taken, the same shall be executed at the next succeeding term, by the jury attending such court: *Provided, however*, That the said courts may, on good cause shown, and on payment of costs, set aside a *non pros.* or judgment by default, on such terms as they may deem reasonable.*

Precepts to be issued to summon jurors, and in default of a sufficient number, qualified by-standers to be called.

Sec. 18. *And be it further enacted*, That the clerks of every county court, (except in the county of Washington,) shall, at least ten days previous to every term, issue a *venire facias*, directed to the sheriff, commanding him to summon and return fifteen good and lawful men of his county, to serve as jurors at the succeeding term of the said court; which number shall be summoned and returned by the sheriff, and serve as jurors during such term; and every juror summoned, and failing to attend without sufficient excuse, may be fined by the said court in any sum not exceeding ten dollars; and on a defect of jurors, a *tales de circumstantibus* may be ordered by the court.

Citations of witnesses, and executions may go to any county.

Sec. 19. *And be it further enacted*, That the said county courts, and each of them, may issue subpœnas, and writs of execution, directed to the sheriff, or other proper officer of any county in this territory, which shall be executed and returned accordingly.

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* This and the four following sections are not inserted in Turner's Digest, and they are no doubt for the most part repealed, or rather superseded by subsequent provisions. It does not appear, however, that they are any where expressly repealed.

Appeals allowed from the county to the superior courts.

SEC. 20. *And be it further enacted*, That any person aggrieved by any final judgment, sentence, or decree of any county court, may appeal therefrom to the next term of the circuit court, to be held in such county, and in the district of Washington to the superior court of said district: *Provided*, that the appellant shall enter into bond with sufficient security, to be approved of by the court from whose judgment the appeal is taken, conditioned that the appellant shall prosecute his appeal to effect, and perform the sentence, judgment, or decree, which the circuit or superior court may render therein, which said bond shall make a part of the record in such case; and if judgment be given in the court above against the appellant, the same shall be entered at the same time against his security in the appeal bond; and a trial *de novo* of issues in fact may be had on such appeals in the court appealed to. No appeal in any cause or court whatsoever, shall be abated by the death of either plaintiff or defendant, but may be proceeded on by application of the heirs, executors, administrators, or assigns of either.

Duty of the clerk on appeals.

SEC. 21. *And be it further enacted*, That in every case when an appeal is obtained, it shall, in eight days after the adjournment of the court, be the duty of the clerk to make out an entire transcript of the record in such case, and deliver the same to the appellant or his attorney, who shall take the same to the clerk of the superior court, and shall by him be entered upon the docket for trial.

Prison bounds.

SEC. 22. *And be it further enacted*, That the justices of every county court shall be, and they are hereby required and empowered to mark and lay out the bounds and rules of their respective prisons, not exceeding ten acres, which marks and bounds shall be recorded, and renewed or altered, from time to time, as occasion shall require; and every prisoner not committed for treason or felony, giving good security, (at the discretion of the court, or three justices thereof out of the court,) to keep within the said rules and bounds, shall have liberty to walk therein out of the prison for the preservation of his health, and keeping continually within the said bounds, shall be adjudged and admitted in law a prisoner.

Unfinished business to be laid over.

SEC. 23. *And be it further enacted*, That if the business of any of the said county courts cannot be completed, ended, and finished within six days from the commencement of the said court inclusive, that all such actions, causes, and matters that shall be depending in said court, shall remain undetermined and laid over to the next succeeding term.

Provisions against discontinuances.

SEC. 24. *And be it further enacted*, That none of the said county courts, nor any process in any of them depending, shall be discontinued for or by reason of the justice's failing to hold court upon the day by law appointed, or of any alteration of any of the days appointed for holding the said courts, but in every such case, all such process, matters, and things depending, shall stand continued, and all appearances upon returns of process, shall be made to the next succeeding term in course, in the same manner as if such succeeding term had been the same term to which such process had stood continued, or such returns or appearances, had been made; and all bonds and obligations for appearances, and all returns, shall be of the same force and validity for the appearance of any person or persons, at such succeeding term; and all summonses for witnesses as effectual, as if the next succeeding term had been expressly mentioned therein.

Executions may issue to any county.

Sec. 25. *And be it further enacted*, That when judgment shall be obtained in any county court, executions thereon may issue to any county within the territory, where the defendant or his goods may be found, and the sheriff of such county is hereby authorized and required to execute the same, and make due return thereon.

The jurisdiction of Washington county court limited.

Sec. 26. *And be it further enacted*, That the county courts of Washington county shall not hereafter have any jurisdiction at common law, for the recovery of any debt or damages, in the determination of which a jury may be necessary, and no jury shall hereafter be returned to the said county court: and the superior court of the district of Washington, shall have jurisdiction and cognizance of all actions and suits in which the value of the matter in controversy shall exceed twenty dollars; any law or usage to the contrary notwithstanding: *Provided, however*, That it shall not be lawful for any attorney to demand or receive any greater fees for his services in the said superior court, than are allowed by law in the county courts for like services, except the sum for which the suit is brought shall exceed two hundred dollars.*

Sections 27, 28, and 29 were repealed in December, 1814.

Clerk's bond and oath.

Sec. 30. *And be it further enacted*, That each of the clerks of the several county courts, within this territory, before entering on the duties of his office, shall give bond with approved security, payable to the governor of this territory, for the time being, and his successors in office, in the sum of five thousand dollars, for the safe keeping of the records, and the faithful discharge of the duties of his office, which said bond shall be lodged in the office of the secretary of the territory, and may be put in suit by the party or parties injured, in his or their own name, and shall not become void upon the first recovery, but may from time to time be put in suit, by action of debt, until the whole penalty shall be recovered; and each of the said clerks shall, moreover, before entering on the duties of his office, swear, or affirm, as the case may be, in manner following:—I,

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* A subsequent Act passed December 18, 1811, having provided as to the times of holding the county courts within the counties of Greene, Wayne, Washington, Baldwin, and Madison, proceeds:—Sec. 5. *And be it further enacted*, That the county courts, within the counties aforesaid, shall have exclusive original jurisdiction of all suits, where the sum or the value of the matter in controversy, does not exceed two hundred dollars, in the same manner, and under the same rules and regulations, by which the county courts west of Pearl river are governed.

A, B, do solemnly swear, or affirm, that by myself or any other person, I neither have given, nor will give, to any person or persons whatsoever, any gratuity, gift, fee, or reward, in consideration of my appointment to the office of clerk of the county court of ——— ; nor have I sold, nor offered to sell, nor will I sell, nor offer to sell, my interest in the said office. I also solemnly swear, or affirm, that I will execute the office of clerk of the aforesaid county court, without prejudice, favour, affection, or partiality, to the best of my skill and ability: so help me God." And should any of said clerks violate his oath, or willingly, wittingly, or corruptly do any thing contrary to the true intent and meaning of the said oath; such clerk shall be deemed, upon conviction thereof, guilty of a misdemeanour in office, and shall ever after be incapable of holding any office, civil or military, within this territory.

CHAPTER II.

An Act fixing the Time of holding the Intermediate Courts, extending the Powers of the Chief Justice of the Orphans' Courts, and for other purposes.—*Passed December 3*, 1810.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That it shall be the duty of the justices of the county courts, and they, or any three of them, are hereby authorized and required to hold two intermediate courts in their respective counties in each and every year; and the said courts may continue to be held three judicial days each term, and no longer.

SEC. 2. *And be it further enacted,* That the aforesaid intermediate courts shall have power to perform all the duties now given and required of them by the existing laws of this territory as an orphans' court, and also to do the business of the county as it relates to roads, bridges, ferries, taverns, retailers of spirituous liquors, allowing claims against the counties: *Provided,* they shall not have the power of trying appeals from justices of the peace.

SEC. 3. *And be it further enacted,* That the chief justice of the orphans' court in each and every county shall have power, in addition to those already given by law, and they are hereby authorized, as often as they may deem it necessary and expedient, to hold a special orphans' court, for the purpose of taking probate of wills, granting letters testamentary, letters of administration and of guardianship, they giving fifteen days public notice of such special court, by advertising in some public newspaper, or at three public places in their respective counties, one of which shall be at the door of the court-house of the county: *Provided,* that if any person or persons shall consider him, her, or themselves aggrieved by the judgment or decree of the chief justice of any county, they shall be entitled to an appeal therefrom to the next orphans' court to be holden for said county.

SEC. 4. *And be it further enacted,* That so much of the twenty-first section of an act, entitled "An Act concerning Wills and Testaments, the Settlement of Intestates' Estates, and the Duty of Executors, Administrators, and Guardians," as gives to the chief justice the power of appointing an administrator or administrators to collect together the goods of the deceased, for the purpose of depositing them in the hands of the chief justice, out of which he shall pay the debts of the deceased, and be liable in law as other administrators, be, and the same is hereby repealed, and in lieu thereof, the chief justice, whenever he may deem it necessary, shall appoint an administrator or administrators, to collect the goods of the deceased, and in case the administrator or administrators, so appointed, shall commence a suit or suits, the same shall not abate by the appointment of an administrator or administrators in chief, but the suit or suits may progress for the use of the administrator or administrators in chief.

SEC. 5. *Whereas* it may sometimes become necessary to dispose of the crop belonging to the estate of deceased persons at private sale: *Be it therefore enacted,* That upon an application being made by any executor, administrator, or guardian to the orphans' court of any county, or in vacation, to the chief justice of said court, such court or chief justice may grant an order for the sale of the crop belonging to the estate, in such manner as shall seem reasonable, and the situation of the estate require; and in all cases it shall be the duty of the court to require of the applicant or applicants, an account of his proceedings, under such order, to be rendered to the next orphans' court of their county.

SEC. 6. *Whereas* persons are sometimes desirous of obtaining permission to retail spirituous liquors during the recess of courts:—*Therefore, be it enacted,* That on such person taking the oath required by law, which oath the clerk is hereby authorized to administer, and entering into bond, with security, as the law directs, and depositing with the clerk of the court the amount of the tax and fee on such license; the said applicant shall be entitled to receive from said clerk a certificate of such deposit, for which the said clerk shall receive fifty cents for his fee thereon; and such applicant shall thereby be authorized to retail liquors, &c. until the next succeeding county court, to which the said applicant shall present the certificate for approbation, and if approved by the court, the clerk shall issue a license to the said applicant, to continue in force for one year from the date of said certificate; and if not approved, the clerk shall refund to the applicant so much of the tax as corresponds to the time yet to come of one year from the deposit.

SEC. 8. *And be it further enacted,* That all acts and laws, or parts thereof, that come within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER III.

Clause of an an Act, passed in 1812.

SEC. 5. *And be it further enacted*, That the county courts shall not take cognizance of any suit or demand, where the matter in controversy is cognizable before a justice of the peace, except by appeal from such justice, or by *certiorari*.

CHAPTER IV.

An Act for the Punishment of Crimes and Misdemeanours.—*Passed February 6, 1807*.*

[The first fifty-six sections of this act are general, and will be found under the title of "Crimes and Misdemeanours:" the following sections relate to the trial of slaves.]

SEC. 57. *And be it further enacted*, That the justices of the quorum of every county or corporation in this territory, shall be justices of oyer and terminer for trying slaves, charged with treason, felony, or other crimes or misdemeanours; which trials shall be by three of the quorum aforesaid, who shall call to their assistance to preside in such trial, two justices of the peace of the county where such offence may be committed, without juries, upon legal evidence, at such times as the sheriffs or other officers shall appoint. not being less than five, nor more than ten days after the offenders shall have been committed to jail; no slave shall be condemned in any such case, unless all of the justices sitting upon his or her trial, shall agree in opinion that the prisoner is guilty, after allowing him or her counsel in his or her defence, whose fee, amounting to ten dollars, shall be paid by the owner of the slave. *Provided always*, That when judgment of death shall be passed upon any such offender, there shall be twenty days at least between the time of passing judgment and day of execution, except in cases of conspiracy, insurrection, or rebellion.

SEC. 58. *And be it further enacted*, That no person having interest in a slave shall sit upon the trial of such slave.

Evidence.

SEC. 59. *And* for a declaration of what shall be deemed legal evidence in such cases, *Be it further enacted*, That the court may take for evidence the confession of the offender, the oath of one or more credible witnesses, or such testimony of negroes or mulattoes, bond or free, with pregnant circumstances, as to them shall seem convincing.

Punishment of negroes.

SEC. 60. *And be it further enacted*, That when any negro or mulatto whatsoever, shall be convicted of any offence not punishable with death by this act, judgment of death shall not be given against him or her, upon such conviction, but he or she shall be burnt in the hand by the sheriff in open court, or suffer such other and corporal punishment as the court shall think fit to inflict, except where he or she once had the benefit of this act, and in those cases, such negro or mulatto shall suffer death.

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* That part of this act which invests the county court with the trial of slaves for offences punishable capitally, has been repealed, by a law passed 24th December, 1822, which transfers the power to the circuit courts. See chapter 4, of this title.

False testimony.

SEC. 61. *And be it further enacted*, That when any negro or mulatto shall be found upon the proof made to any county or corporation of this territory, to have given a false testimony, every such offender shall, without further trial, be ordered by the said court to have one ear nailed to the pillory, and there stand for the space of one hour; and then the said ear to be cut off, and thereafter the other nailed in like manner, and cut off at the expiration of one other hour, and moreover, to receive thirty-nine lashes on his or her bare back, well laid on, at the public whipping-post, or such other punishment as the court shall think proper, not extending to life or limb; and at every such trial of slaves for capital offences, the person first named in the commission, then sitting, shall, before the examination of any negro or mulatto, charge such evidence to declare the truth, which charge shall be in the words following, to wit:—"You are brought hither as a witness, and by the direction of the law I am to tell you, before you give your evidence, that you must tell the truth, the whole truth, and nothing but the truth; and if it be found hereafter that you tell a lie, and give false testimony in this matter, you must for so doing have both your ears nailed to the pillory, and cut off, and receive thirty-nine lashes on your bare back, well laid on, at the common whipping-post."

CHAPTER V.

An Act* prescribing a Summary Mode for the Trial of Slaves.—*Passed December 21, 1812.*

Trial of slaves.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That hereafter, for the trial of slaves charged with treason, felony, or other crimes or misdemeanours, any three justices of the quorum, ~~or~~ any two justices of the quorum with one or more justices of the peace, (excepting always the justice who committed the slave,) shall constitute a competent court: and when any slave or slaves, charged with any crimes as aforesaid, shall be regularly committed to the jail of any county, it shall be the duty of the sheriff of such county, within not less than five nor more than ten days after such commitment, to summon a court as aforesaid, and also a jury of good and lawful men of the vicinage, not being the master of such slave or slaves, or related to the master or prosecutor of such slave or slaves in any degree which would be a cause of challenge to a juryman in a trial of a free person, and such court and jury shall proceed in the trial of said slave or slaves, without presentment or indictment, and pass sentence, and order execution thereof, in manner prescribed by law.

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* See Sec. II. Chapter 14. of this title.

Court to appoint counsel.

SEC. 2. *And be it further enacted*, That the court shall in all cases have power to appoint counsel on the part of the prosecution, with a fee of ten dollars, the clerk's certificate of such appointment and service shall be a sufficient authority for the auditor of public accounts to issue his warrant for the same on the territorial treasury.

Repealing clause.

SEC. 3. *And be it further enacted*, That so much of the fifty-seventh section of an act, entitled "An Act for the Punishment of Crimes and Misdemeanours," as comes within the purview and meaning of this act, be, and the same is hereby repealed.

CHAPTER VI.

An Act* to amend "An Act prescribing a Summary Mode for the Trial of Slaves.—*Passed January* 15, 1814.

For offences not capital, before a justice of peace, how punished. Justice to summon witnesses.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That any slave may be tried for any offence not capital, by any justice of the peace on warrant, and may be sentenced to receive any number of stripes not exceeding one hundred, which sentence shall be executed by the constable: *Provided, however*, That no slave shall be sentenced to receive more than thirty-nine lashes, unless two respectable slaveholders to be summoned by the justice for the purpose of trying said slave, concur with him in the sentence; and any such justice of the peace shall summon and compel the attendance of all witnesses necessary to establish any fact for or against such slave, and shall duly examine such witnesses.

In capital cases, how to be tried.

SEC. 2. *And be it further enacted*, That three justices of the quorum, or two justices of the quorum and one justice of the peace, and in case there be no justices of the quorum convenient, then three justices of the peace shall hold a court at the court-house of the county, for the trial of any slave charged with a capital offence, and the clerk of the superior court of the county in which such court may set, shall attend it, and make a record of its proceedings, and shall issue all necessary subpœnas for such slave, as well as for the territory, to compel the attendance of witnesses, and shall charge the usual fees, to be paid by the territory.

Clerk of superior court to attend, &c.

Penalty on justices failing to attend.

SEC. 3. *And be it further enacted*, That in case any justice of the quorum or peace, when summoned by the sheriff, shall fail to attend, or having attended, shall refuse to sit and hold court, such justice shall be returned by the sheriff to the next superior court, and fined at the discretion of such court, not exceeding fifty dollars, and the sheriff shall summon another to supply such vacancy, and shall charge his usual fees for summoning witnesses, payable by the territory.

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* See Sec. II. Chapter 14. of this title.

Court to punish according to the offence.

Sec. 2. *And be it further enacted*, That in case a court be called to try a slave on a charge of a capital nature, and it turn out in evidence that the crime is under that decree, such court may nevertheless go on to punish such slave by stripes or burning, as the case may require.

Penalty on juror failing to attend.

Sec. 5. *And be it further enacted*, That if any juror duly summoned refuse to attend or sit; and render a verdict in any case, when a slave is to be tried, such juror may be committed for a contempt during the day, and fined not exceeding twenty dollars.

Certain crimes committed by slaves, made capital.

Sec. 6. *And be it further enacted*, That if any slave shall maim a free white person, or shall attempt to commit a rape on any free white woman, or shall attempt to commit any other capital crime, or shall be voluntarily accessory before, or after the fact in any capital offence, or shall be guilty of the manslaughter of any free person, or shall be guilty of burning any dwelling-house, out-house, barn, or stable, or shall be accessory thereto: or shall be guilty of any crime made capital by law, or shall be accessory to any crime herein named, any such slave shall on conviction suffer death.

Sec. 7. *And be it further enacted*, That the fourth section of the act entitled "An Act to amend the Act for the Punishment of Crimes and Misdemeanours"—and the seventeenth section of the act respecting "Slaves," and all other acts and parts of acts coming within the purview of this act, be, and the same are hereby repealed.

CHAPTER VII.

An Act to amend the several Acts concerning the Trial of Slaves.—*Passed December* 17, 1819.

Justices of the county court may try slaves for felony.

*Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, the justices of the inferior court of every county, or corporation in this state, shall be justices of oyer and terminer, for trying slaves charged with treason, felony, or other crimes and misdemeanours of a higher grade than petit larceny, which trials shall be before any three or more justices of the court aforesaid, and by a jury of twelve good and lawful men of the vicinage where such crimes shall have been committed.

Manner of proceeding against slaves.

Sec. 2. *And be it further enacted*, That whenever any slave shall be brought before a justice of the county court, or of the peace, for the commission of any offence against the penal laws of this state, of a higher grade than petit larceny, if the justice after examination should think there are just and probable grounds of suspicion of the guilt or criminality of the offender, he shall immediately commit each slave to jail, and he is hereby empowered and directed to issue a summons to the sheriff of the county, to summons the justices of the county court, and a jury of twelve good and lawful men of the vicinage, to meet at the court-house of said county, neither of whom shall be master of said slave, or related to the master or prosecutor of such slave, in any degree, which would be a cause of challenge to a juryman in a trial of a free person, and such court and jury shall proceed in the trial of such slave without presentment or indictment, and no slave shall be condemned, unless he be found guilty by a jury, after allowing him or her counsel in his or her defence, whose fee, amounting to ten dollars, shall be paid by the owner of the slave: *Provided always*, That when judgment of death shall be passed upon such offender, there shall be thirty days (at least,) between the time of passing judgment and the day of execution, except in cases of conspiracy, insurrection, or rebellion. Proviso.

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* This Act, together with all others heretofore in force establishing courts of "oyer and terminer for the trial of slaves, and free people of colour, for offences punishable capitally," was repealed by an act passed December 24, 1822, which transfers the trial to the circuit court. See chap. 14 of this title.

SEC. 3. *And be it further enacted*, That all acts and parts of acts not repugnant to the provisions of this act, shall be, and the same are hereby continued in full force.

CHAPTER VIII.

An Act to regulate the Proceedings in the Courts of Law and Equity in this State.—*Passed December* 14, 1819.

[Many of the sections of this act preceding the twenty-sixth, will be found under the title of "Superior Courts."

Inferior court established. SEC. 26. *And be it further enacted*, That from and after the passage of this act, there shall be established in each and every county in this state, an inferior court, to consist of five justices, to be appointed by the legislature, and to hold their offices during good behaviour, any three of whom shall be competent to hold said court, and shall be styled "Justices of the County Court."

When held. SEC. 27. *And be it further enacted*, That the said court shall hold its terms quarterly, or four times in each and every year, in the several counties in this state, at the times following:

Mobile. In the county of Mobile, on the first Mondays in June, February, March, and October.

Baldwin. In the county of Baldwin, on the first Mondays in June, February, March, and October.

Clarke. In the county of Clarke, on the first Mondays in February, August, May, and November.

Washington. In the county of Washington, on the second Mondays in February, August, May, and November.

Monroe. In the county of Monroe, on the first Mondays in June, February, March, and October.

Conecuh. In the county of Conecuh, on the first Mondays in June, February, March, and October.

Henry. In the county of Henry, on the fourth Mondays in March, October, June, and December.

Butler.

In the county of Butler, on the fourth Mondays in March, October, June, and December.

Wilcox.

In the county of Wilcox, on the fourth Mondays in March, October, June, and December.

Marengo.

In the county of Marengo, on the second Mondays in February, April, July, and October.

Greene.

In the county of Greene, on the first Mondays in February, April, July, and October.

Perry.

In the county of Perry, on the third Mondays in February, April, July, and October.

Dallas.

In the county of Dallas, on the fourth Mondays in March, October, June, and December.

Autauga.

In the county of Autauga, on the fourth Mondays in March, October, June, and December.

Montgomery.

In the county of Montgomery, on the fourth Mondays in March, October, June, and December.

Cahawba.

In the county of Cahawba, on the fourth Mondays in February, April, July, and October.

Shelby.

In the county of Shelby, on the third Mondays in March, September, June, and December.

St. Clair.

In the county of St. Clair, on the second Mondays in March, September, January, and May.

Tuskaloosa.

In the county of Tuskaloosa, on the last Mondays in January, May, August, and November.

Jefferson.

In the county of Jefferson, on the first Mondays in March, June, September, and December.

Blount.

In the county of Blount, on the first Mondays in January, July, April, and November.

Cotaco.

In the county of Cotaco, on the first Mondays in February, May, August, and December.

Franklin.

In the county of Franklin, on the second Mondays in February, August, May, and November.

Marion.

In the county of Marion, on the third Mondays in February, August, May, and November.

Lawrence.

In the county of Lawrence, on the first Mondays in February, August, May, and November.

Lauderdale.

In the county of Lauderdale, on the fourth Mondays in January, April, July, and October.

Limestone.

In the county of Limestone, on the third Mondays in January, April, July, and October.

Madison.

In the county of Madison, on the fourth Mondays in January, July, April, and November.

Jackson.

In the county of Jackson, on the third Mondays in January, July, April, and November; and the first and third terms of said courts may continue in session for and during the time of six judicial days each, unless the business thereof shall be in a shorter time completed.*

May continue six days.

Jurisdiction in debt and assumpsit.

Sec. 6. *And be it further enacted*, That the said county courts shall, in addition to the jurisdiction heretofore given to the county court and orphans' court in the territorial government, have concurrent jurisdiction in all actions of debt and assumpsit with the circuit courts, under the limitations prescribed by this act.

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* This Act has been considerably altered by the Act of June, 1821, which, however, was limited to the first of January, 1823; but was revived with some additions, December 26, 1822. See Chapter 14 of this title.

Proviso.

Sec. 29. *And be it further enacted,* That at the second and fourth terms of said court, in each and every year, it shall have that jurisdiction only, which has heretofore been exercised by the orphans' court established under the territorial government: *Provided,* That such terms shall not exceed three days each.

Clerk.

Sec. 30. *And be it enacted,* That the clerks of the inferior courts shall be the clerks of the said courts, and shall give the same bond, and be liable to the same penalties, and be governed by the same regulations and restrictions, as clerks of the circuit courts are.

Rules of practice in circuit courts to be in force.

Sec. 31. *And be it enacted,* That the same rules of practice, methods, and proceedings, shall be had, kept, and observed, by the said county courts and the officers thereof, in granting, issuing, executing, and returning process, and awarding judgments on judicial attachments, and the like remedy, recovery, and relief against the sheriff and bail, as in like cases are provided by law, in suits depending, or to be commenced in the circuit courts within this state.

Appeal.

Appellant to give bond, &c.

Attorney to certify reasons of appeal.

Proviso.

Clerk to transmit a copy of proceedings.

Proviso.

Wherein appellant shall pay damage.

Sec. 32. *And be it enacted,* That when any person or persons, either plaintiff or defendant, shall be dissatisfied with the judgment, sentence, or decree of any county court, he may pray an appeal from such sentence, judgment, or decree, to the circuit court of the county wherein such county court shall be; but before obtaining the same, shall enter into bond with two sufficient securities for prosecuting the same with effect, and for performing the judgment, sentence, or decree, which the circuit court shall make thereon, in case the appellant shall have the cause decided against him: *Provided,* That before the granting any appeal whatever, the attorney praying the same shall certify to the court in writing, reasons for his motion, with his opinion that the same are good and sufficient in law: *Provided,* That in all cases of appeal from the county court, the record of the proceedings shall be returned by the clerk of the said court, to the office of the clerk of the circuit court, twenty days previous to the term day on which said appeal shall stand for trial, why such appeal ought to be granted; which certificate aforesaid, signed with the name of the said attorney, shall make part of the record, and be transmitted, with the other transcript of the cause to the circuit court aforesaid; *Provided,* That in all cases of appeal obtained as aforesaid, which shall not be prosecuted, or the court before whom such appeal may be determined, shall affirm the judgment of the court below, then shall the appellant be decreed to pay the appellee fifteen per centum damages, from the passing of the judgment in the county court.

Manner of prosecuting writs of error.

Sec. 33. *And be it enacted,* That when any person shall be desirous of prosecuting a writ of error from the county court, he shall move the court where such is, or hath been depending, to allow such writ of error, he first entering into bond and security to the satisfaction of the court, to abide by, perform, and fulfil the judgment which shall be given in the court above; and the same rules and regulations in prosecuting such writs of error, shall be observed and practised in the county courts, as are prescribed for prosecuting writs of error from the circuit courts.

Rules in circuit courts to be observed in county courts.

Sec. 34. *And be it enacted*, That it shall and may be lawful for every county court within this state, where any idiots, or lunatics, shall be within the jurisdiction thereof, to appoint them, or either of them, a guardian, taking bond with approved security for the faithful administration of the trust reposed in such guardian, in the same manner as bonds are taken from the guardians of orphans; and such guardian, when so appointed, shall continue during the pleasure of the court, and shall have the same power, to all intents, constructions, and purposes, and shall be subject to the same rules, orders, and restrictions, as guardians of orphans are: such lunacy to be ascertained by the inquisition of a jury, by virtue of a writ to be issued by the court, to the sheriff of the county for that purpose.

County courts to appoint guardians to idiots or lunatics.

Lunacy to be ascertained by a jury.

Sec. 35. *And be it further enacted*, That the same mode of summoning jurors, and requiring their attendance, and all other provisions relative thereto, as prescribed by the act of the legislature of the Mississippi territory, passed in the month of December, 1811, be, and the same is hereby declared, to remain in full force and effect throughout this state: *Provided*, however, that in every case, the number of jurors to be summoned for the circuit court, shall in no case be less than thirty-six, and for the county courts, for the terms for the trial of causes in the counties respectively, throughout the state, the number of jurors shall not be less than twenty-four.

Mode of summoning jurors.

What number of jurors shall be summoned.

Sec. 36. *And be it further enacted*, That the clerks of the circuit and county courts, and sheriffs of the different counties in this state, shall, after the first day of July next, keep their offices at the several court-houses or places of holding courts therein, or within one mile thereof.

Clerks and sheriffs shall keep their offices at the court-house.

Sec. 37. *And be it further enacted*, That when any suit shall be instituted, by any person or persons, as assignee or assignees, of any bond or other writing, it shall not be necessary for the plaintiff or plaintiffs to prove the assignment or assignments, unless the defendant or defendants shall annex to the plea, denying such assignment or assignments, an affidavit, stating that such defendant or defendants verily believe, that some one or more of such assignments was forged, or make oath to the same effect in open court, at the time of filing such plea.

Assignees shall not prove assignment of bonds, &c.

Sec. 38. *And be it further enacted*, That in cases of appeals from judgments of justices of the peace, the court, before whom such appeal shall be brought, shall proceed to try the same according to the justice and equity of the case, without regarding any defect in the warrant, capias, summons, or other pro-

Appeals from justices, how tried.

ceeding of the justice of the peace before whom the same was tried.

Forcible entry and detainer. Sec. 39. *And be it further enacted*, That when any judgment shall be entered up for the plaintiff by any justice of the peace, on the trial of any cause for a forcible entry and detainer, or forcible or unlawful detainer, no writ of restitution shall be issued by said justice within twenty days from the day of entering up said judgment.

Judges of county courts to elect chief justice. Sec. 40. *And be it further enacted*, That the judges of the county courts in each and every county, shall elect one of their own number, who shall preside, and be styled Chief Justice.

CHAPTER IX.

An Act supplementary to "An Act regulating the Proceedings of the Courts of Law and Equity in this State," Passed the present Session of the General Assembly.—*Passed December* 17, 1819.

Chief justice of the county court, his powers. Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the chief justice of the county court of each county, shall be vested with the powers and perform the duties which heretofore appertained to the office of chief justice of the orphans' and county court.

When and how records and papers are to be transferred from late to present county courts. Sec. 2. *And be it further enacted*, That the clerks of the several county courts, and registers of the several orphans' courts, shall on the first day of January next, deliver over to the clerks of the county courts of their respective counties, all records and papers of said county and orphans' courts, and from and after the said day, all causes and proceedings of said county and orphans' courts, shall be transferred to, and be heard and determined in said county courts.

The powers and duties of clerks of county courts, what, and when to commence. Sec. 3. *And be it further enacted*, That the clerk of the county courts of each county, as soon as he is qualified, and enters on the duties of his office, as required by law, shall exercise and perform all the powers and duties, which heretofore by law appertained to the offices of clerk of the county court, and register of the orphans' court.

Writs, when to bear test. Sec. 4. *And be it further enacted*, That all writs returnable to any court of record shall bear test on the day on which the same shall be issued.

Clerks of the superior courts to transfer papers and records to clerks of circuit courts. Sec. 5. *And be it further enacted*, That the clerks of the superior courts of each county, shall deliver over to the clerks of the circuit court of the same, all records, books, and papers belonging to the office of clerk of the superior court, and the clerks of the said circuit courts respectively shall keep the same in their care, in the same manner as the other records and papers of their respective offices.

This act in force from its passage. Sec. 6. *And be it further enacted*, That this act shall be in force from and after the passage thereof.

Acts of clerk who enter on the duties of Sec. 7. *And be it further enacted*, That all the acts of any clerks elected under the constitution, and who have acted as their offices before authorized, rendered valid.

clerks of the superior and county courts, shall be good in law and equity.

Governor to issue writs of election to new counties.

Magistrates and constables in commission, who have fallen into new counties, to be continued as such.

SEC. 8. *And be it further enacted*, That the governor be and he hereby is authorized, forthwith to issue writs of elections to some fit persons in those counties where there is no sheriff or clerks in said county or counties, for the purpose of electing sheriffs, clerks, &c. and, that the magistrates and constables in commission, who may have fallen into any new county, other than the county or counties for which they were appointed and commissioned, in consequence of the division of counties, shall continue as such, and hold and exercise the duties of their respective offices until others shall be elected and qualified according to law.

CHAPTER X.

An Act to repeal in part and amend an Act entitled "An Act to regulate the Proceedings in the Courts of Law and Equity in this State."—*Passed June 14, 1821.*

When this act takes effect.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That so much of the act of the first session of the general assembly of this state, entitled, "An Act to regulate the Proceedings in the Courts of Law and Equity in this State," as establishes an inferior court in each county in this state, to consist of five justices, shall be repealed, and cease to be in force from and after the first day of August next.

Judges, how elected.

Powers.

Oath.

SEC. 2. *And be it further enacted*, That there shall be elected by joint vote of both houses of the general assembly, one judge of the county court, who shall hold his office during good behaviour. The county courts so established and organized, and the judges thereof respectively shall be, and are hereby vested with all the powers and jurisdiction, and shall perform the duties which now appertain to the county courts in the first section of this act mentioned, and to the chief justice thereof, except in cases where it may be otherwise directed by this or any subsequent act; each judge shall, before entering on the duties of said office, before a justice of the peace, take and subscribe the following oath or affirmation, viz: "I —— ———, do solemnly swear, (or affirm) that I will impartially and diligently, and without being influenced by fear, favour, or affection, faithfully execute the office of judge of the county court of ——— county, to the best of my skill and ability so long as I continue to hold the same;" and shall also take the other oaths required of public officers of this state, (which oaths by him so subscribed, he shall cause to be filed in the clerk's office of said court;) and shall enter into bond with good and sufficient security, to be approved of, and for such sum as may be directed by a judge of the circuit court, not less than five thousand dollars, payable to the governor for the time being, and his successors in office, conditioned for the faithful performance of the duties assigned them: which bond and oath shall be filed in the office of the secretary of state, subject to be sued on by any person or persons, for any injury, waste, or damage sustained in any estate, in consequence of any neglect or omission of taking good and sufficient security from guardians, executors, executrix, administrator, or administratrix.

Courts when held. Process returnable.

SEC. 3. *And be it further enacted*, That the county courts hereby established, shall be held by the respective judges thereof twice a year in each county in the state, each session shall continue twelve judicial days, unless the business thereof shall sooner be completed, and said session shall commence as follows, viz.:—

In the County of Mobile, on the second Mondays in February and June.

In the county of Baldwin, on the third Mondays in January and June.

In the county of Clarke, on the second Mondays in January and July.

In the county of Washington, on the third Mondays in January and July.

In the county of Monroe, on the third Mondays in January and July.

In the county of Conecuh, on the second Mondays in February and August.

In the county of Henry, on the third Mondays in February and August.

In the county of Butler, on the second Mondays in February and August.

In the county of Wilcox, on the fourth Mondays in January and July.

In the county of Marengo, on the first Mondays in January and July.

In the county of Greene, on the fourth Mondays in January and July.

In the county of Perry, on the second Mondays in January and July.

In the county of Dallas, on the third Mondays in January and July.

In the county of Autauga, on the second Mondays in January and July.

In the county of Montgomery, on the first Mondays in January and July.

In the county of Bibb, on the first Mondays in January and July.

In the county of Shelby, on the second Mondays in January and June.

In the county of St. Clair, on the third Mondays in January and June.

In the county of Tuskaloosa, on the first Mondays before the last Monday in December and June.

In the county of Jefferson, on the first Mondays in January and July.

In the county of Blount, on the second Mondays in February and August.

In the county of Cotaco, on the second Mondays in January and July.

In the county of Franklin, on the second Mondays in June and December.

In the county of Marion, on the third Mondays in February and August.

In the county of Lawrence, on the first Mondays in January and July.

In the county of Lauderdale, on the fourth Mondays in January and July.

In the county of Limestone, on the third Mondays in January and July.

In the county of Jackson, on the second Mondays in February and August.

In the county of Madison, on the fourth Mondays in January and July.

In the county of Pickens, on the second Mondays in December and June.

Process returnable.

And all process returnable to the next terms of any of the present county courts, shall be returned to the first terms of the courts established by this act respectively.

Clerk's duty and fees.

SEC. 4. *And be it further enacted*, That the clerks of the inferior courts shall be clerks of the said county courts respectively, and shall duly enter all orders and decrees made by their respective courts, or the judge thereof; issue all citations and other process which may be necessary in proceedings before said courts, and the judges thereof respectively: they shall have custody of the records and papers of the orphans' and county courts heretofore established in their respective counties, shall perform the several duties now appertaining to the office of clerk of the county court, and be entitled to the fees now allowed therefor.

Judge's powers.

SEC. 5. *And be it further enacted*, That the judge of each county court shall have power within the county, either in open court or in vacation, to take the probate of wills, grant and repeal letters testamentary and letters of administration, appoint and displace guardians of infants and idiots, lunatics, and persons *non compos mentis*, and to make all necessary orders for the issuing process and other purposes within his jurisdiction, according to such regulations as are, or may be established by law in such cases: each judge shall by order made in open court, appoint certain days, (not less than one in every period of two weeks,) for the return of process in such cases as he is competent to hear and determine in vacation, and on each return day shall attend at the court-house, or place appointed for holding the county court, to hear and determine such cases.* All process issued in such cases shall be made returnable to the next return day, or if the party applying therefor shall so require, to some other return day or stated session. If on any return day, the business then required to be acted on, shall not be completed, the judge shall attend on the succeeding day, and from day to day, until the business shall be completed: but for special cause he may adjourn any part of the business to such other day as he may appoint. The clerk of the court and sheriff shall attend the sittings of the judge on return days as well as at stated sessions.

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* This Act repealed in part—See Chapter II. Sec. 4, of this Title.

Jury may be empannelled.

SEC. 6. *And be it further enacted*, That in all cases where it may be necessary to have any matter depending before any of said courts, or the judge thereof, on any return day, tried by a jury, the sheriff, by order of the judge, shall forthwith summon and empannel a jury.

Administrators where assetts.

SEC. 7. *And be it further enacted*, That where any person may have died, having no known place of residence within any county of this state, his or her will may be proved, and letters testamentary, or of administration thereon granted, in the county where the lands devised, or any part thereof lie; or the will may be proved, and letters testamentary granted, or administration may be granted, in any county where the goods and chattels, and debtors, or any part thereof, of such testator, or intestate, may be.

On application for administration, notice to issue.

SEC. 8. *And be it further enacted*, That on application for the probate of any will, or for letters of administration, the clerk shall issue a citation requiring the sheriff to summon the widow and next of kindred of the deceased, to appear at some return day in said process named, (or appear at the next stated session) and show if they have any thing to allege against such application, and subpœnas for such witnesses as the applicant may name on the return of such process, executed on the proper parties a reasonable time before the return day thereof, (allowing one day for every twenty miles) he, she, or they may reside from the place of holding the court, or on satisfactory proof that the deceased has no widow or kindred resident in the state, the application may be heard and determined: the court at any stated session may hear and determine such applications, though no citations may have been executed or issued, on proof of reasonable notice thereof, as aforesaid, or on proof that the deceased has no widow or kindred resident in the state.

Jury may be empannelled.

SEC. 9. *And be it further enacted*, That when the validity of any will shall be contested, or doubts may arise as to its validity, or as to any fact which in the opinion of the judge it may be necessary to have ascertained by the verdict of a jury, before awarding any order, judgment, or decree, such judge at any stated session, or on any sitting held in vacation, according to the provisions of this act, may forthwith cause a jury to be summoned and empannelled, to try such issues, or inquire of such facts as, under his direction, shall be submitted to their decision, and shall cause them to be sworn, in such form as the case may require.

Citation to produce wills.

SEC. 10. *And be it further enacted*, That if any of said judges shall be informed that any will, whereof he is competent to take the probate, is in possession of any person, such judge may order a citation to issue, returnable as in other cases, requiring the person so charged, and all others who may have possession of such will, to produce the same before him at or before the return day of such process, and on its being duly ascertained by proof, that any person or persons on whom such process has been executed, conceals, or improperly delays to produce such will, such judge may commit him, her, or them to jail, to remain in custody until the will shall be produced, and may make such other orders as may seem necessary in the case.

Writ of lunacy to issue.

SEC. 11. *And be it further enacted*, That inquisitions, as to idiots, lunatics, or persons *non compos mentis*, may be ordered in vacation, or in open court, and made returnable as process of citation, on sufficient cause shown, the judge may order any such inquisition to be had before him. In other respects the same proceedings shall be had thereon as heretofore.

Oaths of administrator and executor.

SEC. 12. *And be it further enacted*, That before issuing letters testamentary, or letters of administration, with the will annexed, such executor or executrix, administrator or administratrix, with the will annexed, shall take, and the judge shall administer the following oath, viz.—"You swear that the writing which has been admitted to be recorded as the last will of , contains the true last will of said , as far as you know or believe, and that you will well and truly execute said will, according to law, and the directions thereof, as far as the goods and chattels, rights and credits of the said will extend, and that you will return a true inventory of all said goods, chattels, and credits, so far as they may come to your knowledge, a true account of sales, and your said administration, as required by law." And before issuing any other letters of administration, such administrator or administratrix shall take, and the judge shall administer, the following oath, viz.—"You swear that , deceased, died without any lawful will, as far as you know, or believe, and that you will well and truly administer all and singular the goods, chattels, and credits of the said deceased, and return a true inventory thereof, so far as they may come to your knowledge, and a just account of sales, and of your said administration, as required by law;" but where letters testamentary, or of administration shall be granted on an authenticated copy of a will, and in such other cases as in the opinion of the judge may require a change in the form of the oath, the oath may be administered in such form as in the opinion of the judge is suitable to the nature of the case.

Executors and administrator's bond.

SEC. 13. *And be it further enacted*, That in all cases before granting letters testamentary, or of administration or guardianship, the executor or executrix, administrator or administratix, or guardian, shall enter into bond, with at least two sufficient securities, approved by the judge, payable to him and his successors in office, in such penalty as he may direct, which shall be at least equal to double the estimated value of the estate. with a condition, as follows: "The condition of the above obligation is such, That whereas the above bound has been duly appointed administrator of the estate of , (or administratrix, or executor, or executrix of the last will of , or guardian of , as the case may be,) now if the said , shall well and truly perform all the duties which are, or may be, by law required of him, (her, or them) as such administrator (or administratix, executor, or executrix, or guardian, as the case may be) then the above obligation to be void, otherwise to remain in full force." Such bond shall not become void on the first recovery, and may be put in suit, and prosecuted from time to time, against all or any one or more of the obligors, then in the name and at the costs of any person or persons injured by a breach thereof, until the whole penalty shall be recovered thereon.

Embezzlement, how tried.

SEC. 14. *And be it further enacted*, That any executor, executrix, administrator, administratrix, or guardian, may be ordered to give further security, on complaint of any of his, her, or their securities, or of any of their representatives, or when there shall appear sufficient grounds to believe, that he, she, or they are about to misapply, embezzle, or remove from the state, the property committed to his, her, or their charge, on proof of gross neglect in the performance of any of the duties on him, her, or them enjoined by law, or that his, her, or their securities have become insufficient, as well as for the causes heretofore specified, and on proof that such executor or executrix, administrator or administratrix, or guardian, has removed from the state, or otherwise endeavoured to elude the service of process on any such complaint, the same may be heard and determined, though the citation be not executed.

Executor, &c. may resign.

SEC. 15. *And be it further enacted*, That any executor, executrix, administrator or administratrix, or guardian, may, by writing, by him or her subscribed and delivered into the clerk's office, resign his or her authority, but in such cases he, she, or they, and his, her, or their securities shall be bound for all the offsets or effects which shall not have been duly administered or applied, or shall not be delivered to their successors respectively.

Security may be changed.

SEC. 16. *And be it further enacted*, That where new securities shall be ordered and taken of any executor, executrix, administrator, administratrix, or guardian, the judge may direct such alteration in the condition of the bond as the case may require, and may order the original securities to be discharged entirely, or from the time of taking such new security as to him shall seem proper.

Administration may be committed to sheriff.

SEC. 17. *And be it further enacted*, That where no one shall have been admitted, and qualified as executor, executrix, administrator, or administratrix, within three months after the death of the deceased, or where the executorship or administration shall have become vacant, by death, resignation, or removal, the judge having jurisdiction of the case may commit the administration to the sheriff, or the coroner of the county, and (unless the judge shall otherwise order) no other oath, bond, or security, shall be necessary to be given than the bond and oath of office already taken and given by such sheriff or coroner, but on his bond for the performance of the duties of his office, he and his securities shall be liable for his administration, and such bond may be sued, and judgment from time to time recovered thereon, in the same manner as is, or may be provided by law, in case of other bonds of executors, administrators, and guardians. The administration so committed to any sheriff, or coroner, may at any time be revoked, on the application of any of the executors, kindred, or creditors of the deceased, and the executor permitted to qualify, or another administrator be appointed: during any contest about the validity of a will, the infancy or absence of the executor or administrator, and in such other cases not otherwise provided for, as may so require, the judge may appoint an administrator or administratrix, with such limited authority as the case may require, and when the necessity of the case may require, such administrations may be granted or revoked forthwith, without any citation.*

Executors appointed by othes states may sue.

SEC. 18. *And be it further enacted*, That when letters testamentary, probate of a will, or letters of administration on the estate of any testator having no known place of residence in this state at the time of his or her death, shall have been duly obtained in any other state, territory, or country, and no personal representative of such testator or intestate, shall have been duly appointed and qualified in this state, the personal representative or representatives, so appointed out of this state, may maintain any action, demand, and receive any debt, and shall be entitled to all the rights and privileges which he, she, or they could have done, or would have had if duly appointed and qualified within this state: *Provided always*, That before the rendition of judgment in any such action, there shall be produced in court, where the same is pending, a copy of such letters testamentary, probate or letters of administration duly authenticated, according to the laws of the United States in such cases, and the certificate of the clerk of the county court of some county in this state, that such certificate has been duly recorded in his office, and in default of such proof, the court may direct a nonsuit to be entered: *And provided further*, that such foreign representative or representatives shall not be entitled to receive any money so recovered, or any money due to him, her, or them, in such right, until the copy of the letters testamentary, probate, or letters of administration shall have been recorded as aforesaid, and then shall have been deposited in the clerk's office of the county court of the county where such judgment shall have been recorded, or of the county in which the debtor or debtors may reside, a bond in such penalty as the judge of said county court may direct, payable to him and his successors in office, and with such obligors thereto as he may approve, conditioned that such representative or representatives shall faithfully administer and apply according to law, all moneys and effects received by him, her, or them, in right of such testator or intestate, from any person or persons in this state, and on such bonds, suits may be brought and judgment recovered, as in other cases.

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* By an act passed 24th December, 1822, this section is so modified as to make the administration committed to the sheriff or coroner apply to the *office*, and not to the *person*. See chap. 14 of this title.

Suit continued in name of deceased executor, &c.

SEC. 19. *And be it further enacted*, That where any suit may have been commenced on behalf of or against the personal representative or representatives of any testator or intestate, the same may be prosecuted by or against any person or persons who may afterward succeed to the administration or executorship, such person or persons may at any time be made parties on motion, and the cause shall proceed in the same manner, and judgment therein be in all respects as effectual, as if the same were prosecuted by or against the parties originally named; where any personal representative or guardian shall be displaced, all moneys due to him or her in such right by execution or otherwise, shall be paid to his or her successor.

Bonds shall enure to judge.

SEC. 20. *And be it further enacted*, That all bonds and recognizances, which may have been given or made payable to the justices of any county court, or orphans' court, or to the chief justice of such courts, heretofore established by the laws of the Mississippi Territory, or of the Alabama Territory, or of this state, shall enure and be payable to the judge of the county court of such county and his successors in office, for the use of the county, and suits may be prosecuted, and judgments recovered thereon, in the name of such judge or any of his successors against all or any one, or more of the obligors to any such bond.

Proceedings in case of insolvency.

SEC. 21. *And be it further enacted*, That when the estate of any testator or intestate shall be reported insolvent, it shall be the duty of the judge of the county court to audit and determine on the accounts relating thereto according to the regulations heretofore prescribed for commissioners in such cases. But in cases where the whole value of the assets according to the inventory and appraisement, shall appear to be less than one hundred and fifty dollars, it shall not be necessary (unless special cause therefor appear) to publish the notification in any gazette. Creditors may in all cases file the evidences of their claims in the clerk's office, and when in the opinion of the judge, the case so require, he may appoint commissioners as heretofore. The notification in such cases shall set forth the times and place appointed for the meeting of the commissioners; commissioners may be appointed, and if any of them refuse or fail to act, others may be appointed in their stead, at any time before the report shall be agreed on: the commissioners, within three days before the time of their first meeting, shall apply at the clerk's office for such evidences of claims as may have been there filed, and shall return the same to the office within ten days after making up their report, or after the last time appointed for meeting. Exceptions to their report shall be heard and determined by the judge: If no report be returned by them, as required by the order, the judge shall appoint some time, not more than four weeks distant, at which he will examine and decide on the case, and notification thereof shall be made by the clerk, by advertisement at the door of the court-house.

Inventory to be returned.

SEC. 22. *And be it further enacted*, That executors and administrators, within three months after their appointment, shall return to the clerk's office, a full inventory of all the goods and chattels, rights of and debts due or accruing to the testator or intestate, at the time of his death, which have come to their possession or knowledge, setting forth the times at which debts are due, and whether due by open account, promissory note, or bond; and within three months after such sale, shall in like manner return an account thereof. Inventories and accounts of sales shall be subscribed and sworn to by the executor or administrator returning the same, before the judge, clerk, or some justice of the peace.

Writ of error may lie.

SEC. 23. *And be it further enacted*, That from any judgment or order final, whether in vacation or term time, an appeal or writ of error, shall lie to the circuit or supreme court in the same manner as upon judgments of the circuit courts.

Documents, &c. to be preserved.

SEC. 24. *And be it further enacted*, That the documents and evidence of all settlements made with executors, administrators, and guardians, shall be carefully preserved by the clerk of said county court, and the settlement entered of record, which evidence, vouchers, documents, and settlement shall be good evidence in any suit for or against such executor, administrator, or guardian, and shall not be impeached, except for fraud in obtaining the same.

Jury, how summoned.

SEC. 25. *And be it further enacted*, That when a jury may be necessary, in said county court, the sheriff shall summon such jury from the by-standers, and not otherwise: *Provided nevertheless*, either of the parties shall have the right of peremptory challenge to four of the jury so summoned, and the sheriff shall supply the deficiency by summoning others in their stead.

Fees.

SEC. 26. *And be it further enacted*, That the judges of the county court shall take and receive the following fees, to be paid by the party applying for the business, to wit: for granting letters testamentary, or letters of administration, one and three-fourths dollar; for order of appraisement, one dollar; for order of sale, one dollar; for order appointing guardian, one dollar; for order removing administrator, or guardian, one dollar; for all necessary orders on writs of *ad quod damnum*, two dollars; for all other necessary orders in the management and settlement of estates, fifty cents each; and for all other orders in county business except where the county or state is directly interested, fifty cents each; and on all judgments in civil cases in term time, the tax fee now allowed by law for a jury, shall be paid to said judges. In all litigated cases, respecting wills, mills, and ferries, two dollars; all of which fees shall be taxed in the bill of costs, and collected by the clerks, and paid over to the judges.

Treasurer to report.

SEC. 27. *And be it further enacted*, That it shall be the duty of the county treasurer annually to make out a full and fair report of all receipts into the treasury, and of all disbursements, and deliver one copy thereof to the clerk of the county court, to be kept by him for the inspection of the citizens of the county; and deliver the original to the judge of the county court: and the judges of said county courts may do any necessary county business not otherwise provided for by this act in vacation or term time, as may best conduce to the interest of the county or state.

Commissioners of revenue, &c.

SEC. 28. *And be it further enacted*, That at every general election there shall be elected in each county in this state four commissioners of the revenue and roads who shall serve for one year, any two of whom, together with the judge of the county court, shall constitute a court, to levy the county tax, to lay out and discontinue roads, have and exercise all the power in relation to roads, bridges, highways, ferries, and causeways, which are at present given to, and exercised by the orphans' or county court; and make the appointment of such county officers as by law are directed to be appointed by the county court.

Commissioners' court, when held.

SEC. 29. *And be it further enacted*, That on the first Mondays in April and October in every year, said judge of the county court and said commissioners, or any two of them, shall hold a court in each county for the purpose aforesaid; and continue in session until the business is completed: *Provided nevertheless*, if said commissioners shall fail to attend on or before the third day of said term, then the judge of the said county shall proceed to levy the tax and appoint the officers required by law.*

SEC. 30. *And be it further enacted*, That this act shall continue and be in force until the first day of January, one thousand eight hundred and twenty-three.

CHAPTER XI.

An Act to Repeal in part, and amend an Act, entitled "An Act to constitute a Court of Oyer and Terminer, for the Trial of Slaves, and for other purposes."† *Passed December* 13, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That so much of the aforesaid act, as makes it the duty of the clerk of the superior court of the county in which such court may sit, to attend said court, and make a record of its proceedings, and issue all necessary subpoenas, for such slave, as well as for the state, and to compel the attendance of witnesses, and shall charge the usual fees to be paid by the state, be, and the same is hereby repealed.

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* Repealed in part in December, 1821, See chap. 13, of this title.

† There is no act with such a title. The act alluded to was probably the act of 1814, entitled "An Act to amend an Act prescribing a Summary Mode for the Trial of Slaves."

Since making the above note, An Act has been passed repealing so much of this act as relates to the Courts of "Oyer and Terminer for the Trial of Slaves and Free People of Colour for offences punishable capitally," and which invests the circuit courts with exclusive jurisdiction in such cases. See chap 14, of this title.

SEC. 5. *And be it further enacted,* That hereafter it shall be the duty of the clerk of the county court, of the county in which such court may sit, to attend it and make a record of its proceedings, and issue all necessary subpœnas for such slave, as well as for the state, to compel the attendance of witnesses, and shall charge the usual fees, to be paid by the county.

SEC. 3. *And be it further enacted,* That so much of an act, passed at Cahawba on the fourteenth day of June last, to repeal in part and amend an act, entitled an act, to regulate the proceedings in the courts of law and equity in this state, as makes it the duty of the judge of the county court to appoint certain days not less than one in every period of two weeks, for the return of process, be, and the same is hereby repealed.

SEC. 4. *And be it further enacted,* That hereafter it shall be the duty of the judge to appoint not less than one day, in every period of each month, for the return of process, as heretofore.

SEC. 5. *And be it further enacted,* That when any vacancy happens by resignation or otherwise in any office, the appointment of which is vested in the county court, it shall be lawful for the judge of said court, and the commissioners of roads and revenue, to make the appointment between the terms of court, and the appointment shall be as valid as if made at the regular term.

SEC. 6. *And be it further enacted,* That in all appeals taken from a justice of the peace, when it shall be made to appear to the court, that the appeal was taken merely for delay, the court shall award fifteen per cent. damages : *Provided, nevertheless,* that this act shall not apply to cases in which appeals shall have been granted previous to the passage of this act.

SEC. 7. *And be it further enacted,* That this act shall be in force from and after the first day of March next.

CHAPTER XII.

Extracts from an Act, *Passed June* 15, 1821.

Judge of county court authorized to practise law.

SEC. 4. *And be it further enacted,* That from and after the passage of this act, any judge or justice of the county court, who has been regularly licensed to practise law in this state, shall be allowed to practise in the circuit court of the county in which he resides, and in no other court : *Provided,* that he shall not be engaged directly or indirectly in any cause which may have been determined or tried before him, any law to the contrary notwithstanding.

Proviso.

Judges.

SEC. 5. *And be it further enacted,* That the election of judges of the county courts, made by the present general assembly, is hereby declared to be valid to all intents and purposes.

CHAPTER XIII.

An Act to repeal in part and amend an Act entitled, " An Act to repeal in part and amend an Act, entitled, an Act to regulate the proceedings in the Courts of Law and Equity, in this State, passed the fourteenth day of June last." *Passed December* 17, 1821.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the first Mondays in February, May, August, and December, in every year, the judges of the several county courts in this state, together with the commissioners of revenue and roads, of their respective counties, or with any two of them, shall hold a court for the purposes, as prescribed in the twenty-eighth section of the act, to which this act is intended as an amendment, and the said judge and commissioners shall continue in session until the business is completed: *Provided, nevertheless,* if said commissioners shall fail to attend on or before the third day of said term, the judge of said county shall proceed to levy the tax and appoint the officers required by law.

Judge may do business if commissioners do not attend.

Repeal.

Sec. 2. *And be it further enacted,* That the twenty-ninth section of the act, to which this is intended as an amendment, be, and the same is hereby repealed.

County court to have control over county funds.

Sec. 3. *And be it further enacted,* That the judges of the county courts, together with the commissioners aforesaid, or a majority of them, shall have control over the funds in the county treasury, and they or a majority of them shall have power to make appropriations for defraying expenses incurred for county purposes: *Provided* nothing herein contained shall be so construed, as to authorize said courts to do any other than county business, at the several terms provided to be holden by this act.

Jurisdiction of county court of Mobile extended in certain cases.

Sec. 4. *And be it further enacted,* That the county court of Mobile county shall have and exercise original jurisdiction in all cases of assault and battery, affrays, breaches of the peace, and of petit and grand larceny, reserving however, to the accused or defendant, in all cases, the right of appeal to the circuit court of Mobile county; and in case of the conviction of the person accused before the county court of Mobile county, should an appeal be granted by the said county court, or should the judge of the said county court, in any case coming within the provisions of this section, doubt as to the rule of legal decision on any point, which may be presented during the investigation of any such case, the sentence of the said court shall be respited, until the decision of the said circuit court be had touching such appeal, or touching the points upon which the judge of the said county court may doubt, which circuit court, at its first term thereafter, shall determine the same, and such decision shall, in all cases, be final and conclusive between the state and the accused.

Judge doubting,

sentence may be respited.

ersons acused or convicted, may

Sec. 5. *And be it further enacted,* That until such appeal, or until the points reserved by the said county court be determined, the person accused or convicted, may be discharged from imprisonment: *Provided*, that such person shall first enter into bond with good and sufficient security, payable to the state of Alabama, conditioned for the personal appearance of such accused or convicted person at the time specified by the said court, or by the judge of the said county court in vacation, which time shall be particularly set forth in the said bond, and in case of the breach of the condition of any bond, in pursuance of the provisions of this act, such bond shall be prosecuted to judgment and execution, in the same manner that recognizances taken in favour of the state, are now prosecuted.

be discharged.

Accused to enter into bond.

Mode of proceeding in case of breach of bond.

SEC. 6. *And be it further enacted*, That all juries to serve in the said county court, on the trial of the offences enumerated in this act, may be drawn from persons residing within the corporate limits of the city of Mobile, and within ten miles thereof.

Jury.

CHAPTER XIV.

An Act to continue in force, and amend an Act, entitled, An Act to repeal in part, and amend an Act entitled, An Act to regulate the proceedings in the Courts of Law and Equity in this State, and for other purposes therein mentioned.—*Passed December* 24, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That so much of the act passed at the called session of the general assembly of this state, in June, eighteen hundred and twenty-one, entitled an act to repeal in part, and amend an act to regulate the proceedings in the courts of law and equity in this state, as is now in force, be, and the same is hereby declared to be of force, after the fourth day of January next.

Acts of 1821 continued in force.

SEC. 2. *And be it further enacted*, That the act passed at the third annual session of the general assembly of this state, entitled an act to repeal in part, and amend an act, entitled an act to repeal in part, and amend an act entitled an act to regulate the proceedings of the courts of law and equity in this state, be, and the same is hereby continued in full force.

SEC. 3. *And be it further enacted*, That the first, second, third, fourth, and fifth sections of the act passed at the third annual session of the general assembly of this state, entitled an act to repeal in part, and amend an act entitled an act to constitute a court of Oyer and Terminer, for the trial of slaves, and for other purposes, be, and the same is hereby continued in force.

SEC. 4. *And be it further enacted*, That the judges of the county courts, shall, in addition to the jurisdiction heretofore given to them, have concurrent jurisdiction with the circuit courts, in all actions of case, covenant, trespass, and assault and battery.

Jurisdiction increased.

SEC. 5. *And be it further enacted*, That appeals shall lie from justices of the peace to the respective circuit or county courts, under the same regulations as heretofore prescribed by law, for taking appeals to the circuit courts.

Appeals from justices of the peace, to lie to circuit or county courts.

Appeals taken for delay only, court to award 15 per ct. damages.

SEC. 6. *And be it further enacted,* That in all appeals taken by virtue of this act, from a justice of the peace, when it shall be made to appear to the court, that the appeal was taken merely for delay, the court shall award fifteen per cent. damages.

Writs of certiorari and supersedeas may be granted.

SEC. 7. *And be it further enacted,* That the judges of the county courts, within their respective counties, shall have full power concurrent with the power of the judges of the circuit courts, to grant writs of *certiorari* and *supersedeas*, returnable to the county courts, under the same regulations now in force, relative to granting the aforesaid writs by judges of the circuit courts: *Provided*, that nothing herein contained, shall be so construed, as to take away from the circuit courts, jurisdiction of the aforesaid writs, granted by the judges of the circuit courts, respectively.

Proviso.

Plaintiff's appealing, to pay costs in certain cases.

SEC. 8. *And be it further enacted,* That in all cases of appeals from justices of the peace, where the plaintiff or person appealing, shall not recover judgment for a greater sum than was by the justice trying the same, adjudged, then and in that case, the plaintiff or person appealing, shall pay all costs, consequent on such appeal: *Provided however*, that this section is intended only to apply to appeals taken up by the successful party.

Proviso.

Judges of new counties to have jurisdiction as other judges.

SEC. 9. *And be it further enacted,* That the judges of the county courts of such counties as have been created since the 14th day of June, 1821, shall have the same jurisdiction with the judges of such courts as were then in existence.

Commissioners of roads and revenue to continue in office—not eligible as tax collector.

SEC. 10. *And be it further enacted,* That the Commissioners of revenue and roads, elected at the last general election, shall continue in office until the next general election; and that no commissioner of revenue and roads shall be eligible to the appointment of assessor or tax collector, or shall discharge the duties thereof either as principal or agent in any manner whatever during his continuance in office.

Circuit courts to have jurisdiction in prosecution of slaves.

SEC. 11. *And be it further enacted,* That in all prosecutions of slaves and free people of colour for offences punishable capitally, the circuit courts, and not the county courts, shall have jurisdiction; and that the trial shall be conducted in the same manner and under the same rules, except as to evidence, as the trial of free white citizens.

Legislature to elect Judges.

SEC. 12. *And be it further enacted,* That the present legislature shall, by joint vote of the two houses, elect county judges for the respective counties in the state, who shall be commissioned by the governor, and whose duties and authority shall commence from and after the 4th day of January next.

Causes may be removed to circuit court.

SEC. 13. *And be it further enacted,* That if any person shall be appointed judge of any of the county courts in this state, who was employed as counsel in any case depending in said court, the said cause shall be removed to the circuit court of said county.

Certain county courts when holden.

SEC. 14. *And be it further enacted,* That the county courts of the following counties shall set at the following times. For the county of Conecuh, on the third Mondays of January and June: for the county of Henry, on the first Mondays in March and September: for the county of Pike, on the first Mondays in January and July: for the county of Covington, on the first Mondays in August and February: in the county of Butler, on the second Mondays of February and August: and in the county of Decatur, on the first Mondays in March and September.

SEC. 15. *And be it further enacted*, That so much of the aforesaid act as makes it the duty of the judges of the county courts in this state to commit administration to the sheriff or coroner in certain cases therein designated, shall be taken and strictly construed so as to attach the said administration to the offices of sheriff or coroner and not to the person.

Administration committed to the office of sheriff and not the person.

SEC. 14. *And be it further enacted*, That this act shall take effect from and after the fourth day of January next.

CHAPTER XV.

An Act to alter and amend an Act extending the jurisdiction of the County Court of Mobile County, passed the 17th day of December, 1821.—*Passed December* 23, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That hereafter, the judge of the county court of Mobile, shall hold a court on the first Mondays in January, March, June, July, September, and December, in every year, for the trial of all cases of assault and battery, affrays, breaches of the peace, and of petit and grand larceny; which said court shall continue in session, if business so require, six judicial days, and no longer.

Time of holding court for assaults, &c.

SEC. 2. *And be it further enacted*, That it shall be the duty of the sheriff of said county, as soon as may be convenient, after the passage of this act, and every twelve months thereafter, to make out a correct list of all persons liable to serve on juries, within the corporate limits of the city of Mobile, and within six miles thereof, and return the same to the clerk's office of said court.

Sheriffs to make list of jurors.

SEC. 3. *And be it further enacted*, That when the said list shall have been returned by the sheriff aforesaid, eighteen names shall be drawn therefrom, which shall compose the original pannel, either in open court, or at any time five days previous thereto, by the clerk and judge, or by the clerk and sheriff; and who shall be summoned at least two days previous to the day of court.

18 persons to compose original pannel.

SEC. 4. *And be it further enacted*, That if any juror shall fail to attend in obedience to his summons, he shall be liable to the same penalties, as he would be in failing to attend on the circuit courts.

SEC. 5. *And be it further enacted*, That in case the yellow fever or other malignant disease should prevail in the said city of Mobile, then, and in that case, it shall be the duty of the judge to adjourn the court to some convenient and healthy

Judge to remove court in case of malignant disease.

place, not more than six miles from the city, by giving public notice of the place, in some of the newspapers printed in the city.

SEC. 6. *And be it further enacted,* That the said county court shall, in all cases, be governed by the same laws and rules of practice, which govern the circuit courts of this state, except where the same is altered by this act, and the act to which this is intended as an amendment.

SEC. 7. *And be it further enacted,* That all acts or parts of acts, coming within the meaning and purview of this act, be, and the same are hereby repealed: *Provided,* that the judge of the county court for the county of Mobile, shall have jurisdiction of all offences against the laws of this state, except where the punishment is capital.

CRIMES AND MISDEMEANORS.—1807.

CHAPTER I.

An Act for the Punishment of Crimes and Misdemeanors, originally passed in June, 1802, but re-enacted with some amendment in 1807.

Murder.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That if any person or persons shall commit the crime of wilful murder, such person or persons, on being thereof convicted, shall suffer death.

Petit treason.

SEC. 2. *And be it further enacted,* That every person, liable to be prosecuted for petit treason, or as accessory thereto, shall in future be indicted, proceeded against, and punished, as is directed in other kinds of wilful murder.

[SEC. 3. *And be it further enacted,* That if any person or persons shall commit the crime of manslaughter, and be thereof convicted, such person or persons, shall be fined in such a sum as shall be assessed against him by the verdict of a jury, and be branded on the hand with the letter M in open court.*]

Maim.

SEC. 4. *And be it further enacted,* That if any person or persons, on purpose, and of malice aforethought, shall unlawfully cut or bite off the ear or ears, or cut out or disable the tongue, put out an eye while fighting or otherwise; slit the nose or a lip, cut or bite off the nose or lip, or cut off or disable any limb or member of any person whatsoever, shall be deemed guilty of *mayhem;* and in every such case, the person or persons so offending, their counsellors, aiders, and abetters, shall, on conviction thereof, pay a fine, not exceeding one thousand dollars; at the discretion of the jury trying such offender, and shall stand in the pillory two hours every day; not exceeding three days.

Assaults with a design of killing, &c.

SEC. 5. *And be it further enacted,* That every person who shall assault another with intent to commit murder, rape, or robbery, shall on conviction thereof, be amerced in such a sum as shall be assessed against him or her by the verdict of a jury, and imprisoned a term, not exceeding one year: and shall also give sufficient security for good behaviour for the term of six months, after the expiration of such imprisonment.

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* The punishment for this offence was altered in 1812. See chapter fifth of this title.

Rape.

SEC. 6. *And be it further enacted,* That every person who shall commit the crime of rape, and be thereof convicted, shall suffer death.

Man stealing.

SEC. 7. *And be it further enacted,* That if any person or persons shall hereafter be guilty of stealing or selling any free person for a slave, knowing the said person so sold to be free, and shall be thereof lawfully convicted, the person or persons so convicted, shall suffer death.

Arson.

SEC. 8. *And be it further enacted,* That every person who shall wilfully and maliciously burn any dwelling house, cotton house, or out-house, or building adjoining such dwelling house, cotton house or store, shall be deemed guilty of arson, and upon conviction thereof, shall suffer death.

Burning out-houses, &c.

SEC. 9. *And be it further enacted,* That every person who shall burn any out house, barn, or stable, not adjoining some dwelling house, or store, or shall burn any hovel, crib, cock, mow or stack of hay, fodder, corn, or grain, or shall be accessory to either of the said offences, before the fact, shall, upon conviction thereof, pay the damages that any person may sustain thereby: and shall suffer imprisonment, not exceeding six months.

Robbery.

SEC. 10. *And be it further enacted,* That every person, who shall commit the crime of robbery, and be thereof convicted, shall suffer death.

Burglary.

SEC. 11. *And be it further enacted,* That every person, who shall commit the crime of burglary, and be thereof convicted, shall suffer death.

Accessories before the fact.

SEC. 12. *And be it further enacted,* That if any person, or persons, shall be accessory before the fact, to any wilful murder, rape, arson, robbery, or burglary; he, she, or they, so offending, shall upon conviction thereof, suffer death.

Accessories after the fact.

SEC. 13. *And be it further enacted,* That if any person or persons, shall be accessory after the fact, to any wilful murder, rape, arson, robbery, or burglary; he, she, or they, so offending, shall, upon conviction thereof, be fined, not exceeding five hundred dollars, at the discretion of the jury, and shall receive thirty-nine lashes on the bare back.

Larceny of, and above 20 dollars.

SEC. 14. *And be it further enacted,* That any person, convicted of larceny, to the value of twenty dollars or upwards, or as accessory thereto, shall restore the goods or chattels so stolen, to the rightful owner or owners thereof; or shall pay to him, her, or them, the value of such goods or chattels, as shall not be restored: and moreover, shall receive thirty-nine lashes, upon his, or her bare back: and shall stand in the pillory, at the discretion of the court; so as not to exceed two hours in each day for three days.

Larceny under 20 dolls.

SEC. 15. *And be it further enacted,* That if any person or persons, shall feloniously take, steal, and carry away, any goods or chattels, under the value of twenty dollars, or shall be accessory thereto, before the fact; he, she, or they, being thereof legally convicted, shall be deemed guilty of petit larceny; and shall restore the goods and chattels so stolen, to the owner or owners thereof: or pay the value thereof to such owner or owners, and shall receive any number of lashes, not exceeding thirty-nine.

Stealing bonds, notes, &c.

Sec. 16. *And be it further enacted*, That robbery, or simple larceny of obligations, or bonds; bills obligatory, or bills of exchange; promissory notes for the payment of money, or notes for the payment of any specific property; lottery tickets, paper bills of credit, cotton receipts, certificates granted by or under the authority of this territory, or of the United States, or of any of them; shall be punished in the same manner, both as to the principal, and accessory, as robbery or simple larceny of goods and chattels.

Receiving stolen goods.

Sec. 17. *And be it further enacted*, That if any person or persons, shall receive or buy any goods or chattels, that shall be feloniously taken or stolen from any other person, knowing the same to have been so taken or stolen: or shall receive, harbour, or conceal any felons or thieves, knowing them to be so: he, she, or they, being of either of the said offences legally convicted; shall restore the goods so received, or pay double the value thereof; and shall stand in the pillory two hours.

Slave stealing.

Sec. 18. *And be it further enacted*, That if any person or persons, shall steal any negro or mulatto slave whatsoever, out of, or from the possession of the owner or overseer of such slave; the person or persons so offending, shall be, and are hereby declared to be felons, and shall suffer death.

Horse stealing.

Sec. 19. *And be it further enacted*, That if any person do feloniously take or steal any horse, mare, or gelding, foal or filly, ass or mule; the person so offending shall restore the property so stolen or pay the value thereof, which shall be adjudged by the jury trying such offender, to the owner or owners thereof, and be fined at the discretion of the jury in a sum not exceeding five hundred dollars, and shall moreover receive thirty-nine lashes on his or her bare back, well laid on, and be branded on the face, or in the right hand, as the court shall think fit, with the letter T, and be imprisoned for a term not exceeding twelve months.

Receiving stolen horses.

Sec. 20. And forasmuch as felons are much encouraged to steal horses, because a great number of persons make a trade to receive and buy of such felons, the horses by them feloniously taken, and also do make it their business to conceal such offenders after the said fact; knowing such felonies to be by them committed: *Be it further enacted*, That if any person or persons shall receive, or buy any horse, ass, or mule, that shall have been feloniously taken or stolen from any other person, knowing the same to have been stolen, or shall harbour or conceal any horse or mule stealer, knowing him to have so offended: such person shall be deemed and taken as an accessory to such felony: and being of either of the said offences legally convicted by the testimony of one or more credible witness or witnesses, shall incur and suffer the punishment of fine, imprisonment, whipping, and branding, as prescribed in the last section.

Prosecution of accessories in horse-stealing.

SEC. 21. *And be it further enacted*, That if any such principal felon cannot be taken so as to be prosecuted and convicted of any such offence; it shall and may be lawful to prosecute every such person or persons buying and receiving any such animal as aforesaid stolen by any such principal felon, knowing the same to have been stolen; and on conviction thereof, such offender shall be punished in the same manner as if the said principal felon had been previously tried and convicted.

Stealing hogs, sheep, &c.

SEC. 22. *And be it further enacted*, That every person, who shall be convicted of stealing any neat cattle, hog, sheep, or goat: shall, for every such animal so stolen, forfeit and pay to the owner the value thereof; and also a fine of twenty dollars to any person suing for the same, to be recovered in any court in this territory, having cognizance thereof: and moreover, the offender shall receive on his bare back, twenty-five lashes, well laid on, for the first offence; and for every succeeding offence, he shall receive on his bare back, thirty-nine lashes, well laid on; and stand in the pillory two hours.

Altering brands and marks.

SEC. 23. *And be it further enacted*, That every person, who shall be convicted of altering or defacing the mark, or brand of any horse, mare, colt, mule, ass, neat-cattle, hog, sheep or goat, not being his own property, and without the consent of the owner, shall, for every such animal, whose brand or mark shall have been so altered or defaced, forfeit and pay the same fines; to be recovered and appropriated in the same manner; and suffer the same penalties as are prescribed in the preceding section.

Putting on a false brand.

SEC. 24. *And be it further enacted*, That if any person shall be convicted of having marked or branded, with his mark or brand, any unbranded or unmarked horse, mare, colt, mule, ass, cattle, hogs, sheep or goat, not being his own property, and without the consent of the owner: the person so offending, shall forfeit and pay the sum of twenty dollars, for every animal so branded, and marked; to be recovered and applied as aforesaid: *Provided, nevertheless*, That if any person being in doubt, as to the right of property, shall call in two of the neighbours next adjoining the range, where such stock shall run, and in their presence, and with their approbation, mark and brand, or mark or brand any such stock as aforesaid, he shall not be liable to any of the penalties contained in this section.

Of injuries to the freehold, and thefts of things belonging to it.

SEC. 25. *And be it further enacted*, That if any person shall throw down or open any bars or gates, fence or fences, belonging to, or enclosing lands not his own; or shall dig up or carry away any roots, fruit, or plants; or shall cut down or carry away any cotton, corn, oats, or rye; standing, lying, or being on any land not his own; or shall take or carry away from any landing place, whereof he is not a proprietor or owner, any boat, water craft, or goods or wares whatever, wherein he hath no interest, without the leave of some person who has interest therein; or shall wilfully injure any building not his own; he shall for each and every such offence, forfeit and pay to this territory, a fine not less than two, nor more than twelve dollars; to be recovered upon complaint, before any justice of the peace, in the county where the offence was committed; and shall be liable to answer in damages to the party injured.

If any person shall wilfully destroy, break, or pull down, injure or deface any public building, monument, instrument of writing, or other instrument or machine, erected or set up by lawful authority, without being duly empowered so to do, the person so offending, shall forfeit and pay for each offence, a fine, not less than twelve dollars, nor more than three hundred, to the use of this territory; to be recovered by information or indictment, in any court of record, having cognizance of the same; and be further liable to answer in damages, as aforesaid. And if any person, on being sentenced to pay any of the fines aforesaid, shall be unable to pay the same; the court passing sentence, may order such person to be publicly whipped, not exceeding thirty-nine stripes; or be imprisoned not exceeding six months; and to find sureties for his good behaviour for the term of one year.

When any of the trespasses before named, shall have been committed upon any buildings, or other property of a particular county, it shall be the duty of the attorney-general to institute an action, and prosecute for the damages the county may have thereby sustained.

And it is provided, that nothing in this section shall be construed to prevent the moving of any incumbrances which may be in the high-way, under the order and direction of any person, who may be legally authorized to superintend the same; or to prevent any prosecution for a theft, where a theft is committed.

Counterfeiting the coin.

SEC. 26. *And be it further enacted*, That if any person or persons shall forge or counterfeit, or cause or procure to be forged or counterfeited, or shall willingly act or assist in the forging or counterfeiting any gold or silver coin, which now is, or hereafter may be passing, or in circulation in this territory; or shall falsely utter, pay, or offer, or tender in payment, any such forged or counterfeited coin, knowing the same to be forged or counterfeited; every person so offending, and being thereof convicted, shall suffer death.

Forgery.

[SEC. 27. *And be it further enacted*, That if any person or persons shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited; or willingly act or assist in the false making, altering, forging or counterfeiting any letters patent, gift, grant, bond, writing obligatory, bill or order, or acceptance of such bill or order, note of the bank of the United States, or of the bank of any one of the said states, or bank of any territory of the United States, cotton receipt, promissory note, will, indenture, deed, or contract, with intention to defraud any person; or shall utter, put off, or offer, or cause to be uttered, put off, or offered in payment, or for sale, any such false, forged, altered or counterfeited bond, bill, order, or acceptance of such bill or order, note of the bank of the United States, or of the bank of any one of the said states, or bank of any territory of the United States, cotton receipt, promissory note, will, indenture, deed or contract, with intention to defraud any person knowing the same to be false, altered, forged, or counterfeited; and shall be thereof convicted, every such person shall suffer death.*]

Stealing, altering, and defacing records.

Sec. 28. *And be it further enacted*, That if any person or persons shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceedings in any of the courts of this territory, by means whereof any judgment shall be reversed, made void, or not take effect; or if any person shall acknowledge, or procure to be acknowledged, in any of the courts aforesaid, any recognizance, bail, or judgment, in the name or names of any other person or persons, not privy or consenting to the same, every such person or persons, on conviction thereof, shall pay a fine, not exceeding five hundred dollars, at the discretion of the jury; and may also, at the discretion of the court, receive thirty-nine lashes: *Provided, nevertheless*, that this act shall not extend to the acknowledgment of any judgment or judgments, by any attorney or attorneys, duly admitted for any person or persons, against whom any such judgment or judgments shall be had or given.

Altering records with intent to defraud.

Sec. 29. *And be it further enacted*, That every person who shall deface, alter, falsify, or embezzle any record, enrolment, or matter, or instrument recorded, or registry thereof, with intent to defraud, shall, upon conviction thereof, pay a fine not exceeding one thousand dollars, at the discretion of the jury; and be imprisoned a term, not exceeding two years.

Perjury, and subornation of perjury.

Sec. 30. *And be it further enacted*, That if any person or persons shall wilfully and corruptly commit perjury, or shall by any means procure any person to commit corrupt and wilful perjury, on his or her oath or affirmation, in any suit, controversy, matter, or cause, depending in any of the courts of this territory, or in any deposition or affidavit taken or made, pursuant to the laws of this territory, every person so offending, and being thereof convicted, shall pay a fine, not exceeding three hundred dollars, at the discretion of the jury; and stand in the pillory two hours: and shall have thirty-nine lashes on the bare back and be thereafter rendered incapable of giving testimony in any of the courts of this territory, until such time as the judgment against such offender be reversed.

Of indictments for perjury.

Sec. 31. *And be it further enacted*, That in all prosecutions against any person for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath or affirmation was taken, averring such court, person or persons, to have competent authority to administer the same: together with a proper averment, or averments, to falsify the matter or matters, wherein the perjury or perjuries, is, or are assigned; without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, other than as aforesaid: and without setting forth the commission or authority of the court, or the commission or authority of the person or persons before whom the perjury was committed.

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* This offence is more fully defined in an act passed in 1812; in which act the twenty-seventh Section above recited is repealed. See Chapter 5 of this title.

"The forgery of any entry of the acknowledgments, certificates, or endorsements, whereby the freehold or inheritance of any man may be changed,"—as well as perjury in relation thereto; is provided for in "An Act respecting Conveyances." See title "Deeds and Conveyances." Chapter 1. Section 21.

Of indictments for subornation of perjury.

SEC. 32. *And be it further enacted*, That in all prosecutions for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, or declaration, or any part of the record or proceeding, either in law or equity, and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed, or was agreed or promised to be committed.

Concealment of felony.

SEC. 33. *And be it further enacted*, That if any person having knowledge of the actual commission of the crimes of wilful murder, rape, arson, robbery, burglary, or larceny, shall conceal, and not as soon as may be, disclose, and make known the same to some of the judges, or other person, or persons, in civil authority, within this territory, on conviction thereof, such person or persons shall be adjudged guilty of misprison of felony, and shall pay a fine, not exceeding three hundred dollars, at the discretion of the jury; and may also, at the discretion of the court, receive any number of lashes, not exceeding thirty-nine.

Obstructing process.

SEC. 34. *And be it further enacted*, That if any person or persons, shall knowingly or wilfully obstruct, resist, or oppose any officer of this territory, in serving, or attempting to serve or execute any mesne process, or warrant, or any rule, or order, of any of the courts of this territory, or any other legal or judicial writ or process whatsoever; or shall assault, beat, or wound any officer, or other person, duly authorized, in serving or executing any writ, rule, order, process, or warrant aforesaid; every person so knowingly and wilfully offending in the premises, shall, on conviction thereof, be imprisoned, not exceeding six months; and fined, not exceeding two hundred dollars, at the discretion of the jury trying such offender.

Rescue.

SEC. 35. *And be it further enacted*, That if any person or persons shall, by force, set at liberty, or rescue any person or persons, who shall be found guilty of any capital offence, or rescue any person convicted of any capital crime, going to execution, or during execution: every person so offending, and being thereof convicted, shall suffer death. And if any person or persons shall, by force, set at liberty, or rescue any person, or persons, who, before conviction, shall stand committed for any capital offence; or if any person, or persons shall, by force, set at liberty, or rescue any person committed for, or convicted of any other offence, every person so offending, shall, on conviction thereof, be fined, not exceeding three hundred dollars, at the discretion of a jury: and be imprisoned not exceeding nine months.

Conveying to a prisoner instruments for escaping.

SEC. 36. *And be it further enacted*, That if any person or persons shall, directly, or indirectly, by any ways or means, howsoever, without the knowledge or privity of the keeper, convey any instrument, tool or other thing whatsoever, to any prisoner, or into any prison, whereby any prisoner might break the prison, or work himself or herself unlawfully out of the same: every person so offending, shall forfeit and pay such fine, as by the direction of the court, shall be imposed; not exceeding one hundred dollars, according to the nature of the cause of the prisoner's commitment: or suffer such corporal punishment, not exceeding forty stripes, as the court shall inflict. And if it shall so happen, that any prisoner shall make his or her escape, by means of any instrument or tool, or other thing, conveyed without the knowledge and privity of the keeper; the person so conveying the same, shall be liable to pay all such sums of money, for which the prisoner stood committed, if on civil process: and shall also have inflicted upon him or her, all such punishment, to which the escaped prisoner would be liable, if a criminal, and had been convicted of the charge, for which he or she had been committed: unless such prisoner would be liable to capital punishment; in which case, the person assisting in such escape, shall be punished by fine, imprisonment, whipping, pillory, or sitting on the gallows, with a rope about his or her neck: or any one or more of the said punishments, as the court, having cognizance thereof, shall think proper to inflict.

Suffering a prisoner to escape.

SEC. 37. *And be it further enacted*, That if any jailer or prison-keeper, shall voluntarily suffer any prisoner committed unto him, to escape, he shall suffer and undergo the like pains, punishments, and penalties, as the prisoner, so escaping, should, or ought by law, to have suffered and undergone, for the crime or crimes wherewith he stood charged, if he had been convicted thereof. And if any jailer, or prison-keeper, shall, through negligence, suffer any prisoner accused of any crime, to escape, he shall pay such fine, as the justices of the court, before whom he is convicted, shall in their discretion, inflict, according to the nature of the offence, for which the escaped prisoner stood committed.

Provided, nevertheless, That if any person who may be committed for debt, shall violently escape from prison, without connivance of the sheriff or keeper, and the sheriff, jailer, or prison-keeper, shall within three months next after such escape, recover the prisoner so escaped, and re-commit him to prison; then the sheriff shall be liable to nothing further than the costs of such action or actions, as may have been commenced against him for such escape.

Polygamy.

SEC. 38. *And be it further enacted*, That if any person or persons, being married, shall again intermarry with any other person or persons, the former husband or wife being alive; he, she, or they, so offending, shall on conviction thereof, pay a fine, not exceeding five hundred dollars, at the discretion of the jury, and be imprisoned a term, not exceeding one year, and receive thirty-nine lashes on his or her bare back.

Provided nevertheless, That this section shall not extend to any person or persons whose husband or wife shall absent him or herself, one from the other, for the space of five years; the one of them not knowing the other to be living within that time; nor to any person or persons, who shall be at the time of such marriage divorced by competent authority; or to any person or persons, whose former marriage shall have been declared or rendered void by sentence of competent authority, or by settlement made before legal authority; or to any person or persons, for, or by reason of any former marriage, had or made within the age of consent.

[Sections 39, 40, 41, 42, 43, and 44 originally constituted a distinct act passed in November 1803, "To prevent the evil practice of Duelling," and will be found under the title of "Duelling." The forty-fourth section, however, is retained because it has been passed in 1807 as a part of the general act concerning crimes, it may perhaps be considered as applying to the whole.]

SEC. 44. *And be it further enacted*, That all fines and forfeitures, which shall be incurred under this act, shall be collected by the sheriff of the particular county, where such offender or offenders reside, and paid by him into the territorial treasury.

Other offences to be punished as at common law.

SEC. 45. *And be it further enacted*, That every other felony, misdemeanor, or offence whatsoever, not provided for by this or some other act of the general assembly, shall be punished as heretofore by the common law.

Libels.

SEC. 46. *And be it further enacted*, That if any person or persons shall be prosecuted by information or indictment, for the writing or publishing any libel, it shall be lawful for the defendant upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel; and the jury who shall try the cause, shall have a right to determine the law and the fact under the direction of the court, as in other cases.

Privileges of the accused.

SEC. 47. *And be it further enacted*, That any person who shall be indicted for any capital crime, shall have a copy of the indictment,* and a list of the jury, which are to pass on his or her trial, delivered unto him or her, at least two entire days before he or she shall be tried for the same; and that every person accused and indicted shall be allowed and admitted to make his full defence by counsel learned in the law. And the court before whom such person shall be tried, or some judge thereof, shall immediately upon his or her request, assign to such person such counsel, not exceeding two, as such person shall desire, to whom such counsel shall have free access at all seasonable hours. And every such person or persons so accused and indicted, shall be admitted in his, her, or their defence, to make any proof he, she, or they can produce by lawful witness or witnesses; and shall have the like process to compel his, her, or their witnesses to appear on his, her, or their trial, as is usually granted to compel witnesses to appear on the prosecution, against him, her, or them.

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* See Sect. 2, Chapter 9, of this title.

Restriction of challenges.

SEC. 48. *And be it further enacted*, That no person indicted for a capital offence shall be allowed to challenge, peremptorily, above the number of twenty persons of the jury; and if any person shall desire to challenge above the number aforesaid, the same shall be received for lawful cause shown only. And if any person on his or her arraignment for any capital or inferior offence, shall stand mute, or will not answer to the indictment, the plea of *not guilty* shall be entered for him or her on the record, and the court shall in either of the said cases, proceed to trial of the person standing mute, as if he or she had pleaded not guilty; and for trial, put him or herself upon the country, and render judgment accordingly.

Limitation of prosecutions.

*SEC. 49. *And be it further enacted*, That no person or persons shall be prosecuted, tried, or punished, for any offence, wilful murder, arson, forgery, counterfeiting, and larceny excepted, unless the indictment, presentment, or information for the same, be found or exhibited within one year next after the offence shall be done or committed. Nor shall any person be prosecuted for any fine or forfeiture under a penal statute, unless the prosecution for the same shall be instituted within twelve months from the time of incurring the fine or forfeiture aforesaid: *Provided*, That nothing herein contained shall extend to any person or persons absconding or fleeing from justice.

Execution.

SEC. 50. *And be it further enacted*, That the manner of inflicting the punishment of death, shall be by hanging the person convicted, by the neck, until dead.

Costs and restitution.

SEC. 51. *And be it further enacted*, That the lands, tenements, goods and chattels, of any person or persons convicted of any crime or misdemeanor, shall be liable and subject in preference to all other demands whatever, (except dower and jointure,) in the first place to the discharge of the expenses incurred by the territory or county, in the prosecution and conviction of such offender; and in the next place, to what restitution or reparation may be adjudged to the injured party; and if the estate of the person or persons shall be incompetent to the said purposes, then in that case, after deducting the expenses of prosecution and conviction as aforesaid, the surplus, if any, shall go towards making reparation to the party injured.

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* So much of this Act as limits prosecutions for Polygamy, Perjury, and subornation of Perjury, has been repealed by an Act passed December 24, 1822. See Chapter 17, of this title.

Prosecutor may pay costs in certain cases.

SEC. 52. *And be it further enacted*, That if the territory shall fail in the prosecution of any inferior offence, the court may at their discretion, and on motion of the attorney-general, if the prosecution appear to be frivolous or malicious, order the prosecutor to pay costs.

The jury to determine the fine.

SEC. 53. *And be it further enacted*, That in all prosecutions for offences of either a capital or inferior nature, no person shall on conviction be fined in a greater sum than shall be assessed by the verdict of a jury; and in all cases, where the defendant or defendants to any indictment whatsoever shall plead guilty, the court before whom the prosecution is depending shall forthwith empannel a jury to assess the fine which shall be inflicted on such defendant or defendants.

Recognizances.

SEC. 54. *And be it further enacted*, That all recognizances hereafter taken for any breach of the peace, for the prosecution of offenders against the laws, or in any case whatsoever, where a recognizance may be necessary, shall be made payable to the governor, for the time being, and his successors in office.

Benefit of clergy abolished.

SEC. 55. *And be it further enacted*, That sentence of death shall in no case be pronounced against any person or persons convicted of either of the crimes herein before mentioned, unless the punishment prescribed for the commission of such crimes is declared to be death by this act; and all laws, customs, or usages relating to, or in any manner respecting the benefit of clergy, are hereby abrogated and made null to all intents and purposes.

Of imprisonment for fines.

SEC. 56. *And be it further enacted*, That all fines and forfeitures which may be recovered by virtue of this act, shall be collected and paid by the sheriff of the county where the offender is tried, into the territorial treasury, and accounted for in the same manner that public taxes are or may be accounted for; and whenever the court before whom any offender or offenders may be tried and fined by the verdict of a jury, shall be of opinion that such offender or offenders, is or are unable to pay the fine so inflicted, and that his or her, or their imprisonment will operate to increase the public expenditure; the said court are hereby authorized and required, to discharge him, her, or them, from custody.

NOTE.—The remaining sections of this act relate to the trial of Slaves, and will be found under title "Courts Inferior."

CHAPTER II.

An Act for the Suppression of Vice and Immorality.—*Passed March* 12, 1803.

SEC 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, And it is hereby enacted by the authority of the same,

No work except, &c. Hunting or other diversion,

that no worldly business or employment, ordinary or servile work, (works of necessity or charity excepted) nor shooting, sporting, hunting, gaming, racing, fiddling, or other music for the sake of merriment, nor any kind of playing, sports, pastimes, or diversions, shall be done, performed or practised, by any person or persons within this territory on the christian sabbath, or first day of the week, commonly called sunday; and that every person being of the age of fourteen years or upwards, offending in the premises, shall for every such offence forfeit and pay the sum of two dollars; and that no merchant or shop keeper, or other person, shall keep open store, or dispose of any wares or merchandise, goods or chattels, on the first day of the week, commonly called sunday, or sell or barter the same, upon pain, that every person so offending shall forfeit and pay the sum of twenty dollars, for every such offence; and if any person offending in any of the premises aforesaid, shall be thereof convicted, before any justice of the peace for the county wherein the offence shall have been committed, upon the view of the said justice, or confession of the party offending, or proof of any witness, or witnesses, upon oath or affirmation; then the said justice before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county where the offence shall have been committed, commanding him to levy the said forfeitures and penalties by distress and sale of the goods and chattels of such offenders: and in case no such distress can be had, then every such offender shall by a warrant under the hand and seal of the said justice, be set publicly in the stocks for any space of time not exceeding four hours.

to be practised on Sunday.

Offenders liable to fine.

No merchant to sell goods on Sunday.

Proceedings against offenders.

SEC. 2. *And be it further enacted*, That no wagoner, carter, drayman, drover, butcher, or any of his slaves or servants, shall ply or travel, with his wagon, carts or drays, or shall load or unload any goods, wares, merchandise, or produce, or drive cattle, sheep, or swine in any part of this territory, on the first day of the week, called sunday, under the penalty of five dollars, to be levied, recovered, and applied in manner and form as is directed by this act.

No wagoner, &c. to ply on Sunday.

SEC. 3. *And be it further enacted*, That no person or persons upon the first day of the week, called sunday, shall serve or execute or cause to be served or executed, any writ, process, warrant, order, judgment, or decree (except in criminal cases, or for a breach of the peace) but that the service of every such writ, process, order, warrant, judgment or decree, shall be void to all intents and purposes whatsoever: and the person or persons so serving or executing the same shall be liable to the suit of the party aggrieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment or decree: *Provided*, That if information shall be made by the oaths of two reputable persons, to any justice of the peace, or magistrate of any corporate town, that they have good reason to believe that, any person liable to have any such process, warrant, order, judgment, or decree, served upon him, intends to withdraw himself and escape from this territory, under cover and protection of the said first day of the week, commonly called sunday; in that case it shall be law-

Process not to be served on Sunday.

Proviso.

ful for any officer duly authorized (being furnished with a certificate of such information upon oath as aforesaid, under the hand of the justice of the peace or magistrate as aforesaid) to serve or execute such process, warrant, order, judgment, or decree, on the first day of the week, which shall be as valid, and effectually done, to all legal intents and purposes, as if the same had been done on any other day of the week.

Persons swearing, to be fined fifty cents.

Sec. 4. *And be it further enacted*, That if any person shall profanely swear or curse, in the hearing of any justice; or shall be convicted of profanely cursing or swearing by the oath of one or more witnesses, or confession of the party before any justice; every such offender shall forfeit and pay for every such offence, the sum of fifty cents.

Drunken persons to be fined one dollar.

Sec. 5. *And be it further enacted*, That every person convicted of drunkenness, by view of any justice, confession of the party, or oath of one or more witness or witnesses, such person so convicted, shall for every such offence forfeit and pay one dollar.

No public amusements to be exhibited on Sunday.

Sec. 6. *And be it further enacted*, That if any person or persons whatsoever, shall show forth, exhibit, act, represent or perform, or cause to be shown forth, acted, represented, or performed, any interludes, farces, or plays of any kind, or any games, tricks, juggling, slight of hand, or feats of dexterity and agility of body, or any bear-bating or bull-bating, or any such like show, or exhibitions whatsoever, on the first day of the week; every person so offending, and thereof convicted, before any justice of the peace, of the county where the offence shall have been committed, shall for every such offence, forfeit and pay the sum of fifteen dollars.

Disturbance of public worship fined.

Sec. 7. *And be it further enacted*, That if any person or persons whatsoever, shall wilfully and of purpose, disquiet, interrupt, or disturb any assembly of people met for religious worship, either by making a noise, or by rude or indecent behaviour, or profane discourse, whether within the place of worship, or out of it, so near the same as to disturb the order and solemnity of the meeting; then every person so offending, and being thereof convicted, before any justice of the peace of the said county, shall for every such offence, forfeit and pay the sum of five dollars.

Mode of recovering certain fines.

Sec. 8. *And be it further enacted*, That in case any person who shall be convicted of any of the offences mentioned in the fourth, fifth, sixth, and seventh sections of this act, shall not immediately pay down their respective sums so forfeited, with the charges of such conviction, then the said justice before whom such conviction shall be had, shall direct and send his warrant under his hand and seal to some constable of the county, where the offence shall have been committed, commanding him to levy the said forfeitures or penalties, together with the charges, by distress and sale of the goods and chattels of such offenders: and in case no such distress can be had, then every such offender shall, by warrant under the hand and seal of the said justice, be set publicly in the stocks for any space of time, not exceeding four hours.

SEC. 9. *And be it further enacted*, That every justice of the peace shall immediately on information given upon oath or affirmation of any person whatsoever, cause the offender or offenders against this act to appear before him, and upon such information being proved as aforesaid, shall convict such offender and offenders in such a manner as in and by this act is prescribed. Proceedings against offenders.

SEC. 10. *And be it further enacted*, That it shall be the duty of the justices before whom such conviction shall be had, to take and receive all such forfeitures and fines, as may become due by virtue of this act, and pay one half to the informer, and the other half to the treasurer of the county wherein the offence was committed, for the use of the poor thereof. Fines disposed.

SEC. 11. *And be it further enacted*, That all and every justice and justices of the peace, for the county wherein any such offence shall be committed, may, and they are hereby respectively authorized and required to put this act into execution, against any person or persons within their respective jurisdictions. Justices' duty.

SEC. 12. *And be it further enacted*, That no person shall be prosecuted for any offence against this act, unless the same be proved or prosecuted within ten days after the commission of such offence. Prosecutions to commence within ten days.

CHAPTER III.

An Act to provide for the more effectual Administration of Justice.—*Passed February 7, 1807.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That all persons shall be bailable, unless for capital offences, where the proof shall be evident or the presumption great, by any justice of the peace, before whom the offender may be brought, before commitment, and by any one of the territorial judges afterward.* Bail.

SEC. 2. *And be it further enacted*, That whenever any person charged with any felonious offence, shall be apprehended and brought before any justice of the peace, such justice shall, before he bails such prisoner, if the offence be bailable, and before he commits him to jail, if it be not bailable, or if the prisoner cannot procure bail, take his examination, and the information on oath of those that bring him, of the fact and the circumstances thereof, and shall immediately put the same, or so much thereof as may be material into writing: and he shall certify such examination and information, together with the bailment, at the next circuit or superior court of the county or district in which such justice may reside, on pain of being fined by such court for neglect therein. Justices to examine, &c.

SEC. 3. *And be it further enacted*, That such justice shall Witnesses.

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* Further provisions on the subject, embraced in this and the following Sections, are contained in title "Justices of the Peace." Chapter 20, Section 20, &c.

have power to bind by recognizance, all such as do declare any thing material relating to the offence, to appear at the next circuit or superior court, as the case may be, whether at its ordinary session or at an extraordinary one, then and there to give evidence concerning the same, and shall certify such recognizance in like manner, on pain of being fined as aforesaid.

Privileges of the accused.

SEC. 4. *And be it further enacted*, That it shall be the duty of the justice of the peace when taking the information of witness as aforesaid, and likewise of the coroner, when taking an inquisition in a case of murder or manslaughter, to inform the party accused, if he should be then in custody, that he will be permitted to ask the witness any proper questions, and such justice or coroner shall commit the same to writing, together with the answers, and shall read over the information given by such witness to the said witnesses, and correct the same if necessary, by making such additions thereto as the witnesses may respectively require, before he shall certify the same.

Escapes from one county to another.

SEC. 5. *And be it further enacted*, That if any person against whom a warrant shall be issued, shall escape, go into, reside or be in any other county than that in which such justice may reside; any justice of the peace where such person may be, upon proof on oath of the handwriting of the justice granting such warrant, shall endorse his name thereon, which shall be a sufficient authority to the person to whom such warrant may be directed, to execute the same within the jurisdiction of such justice.

Reward for apprehending criminals.

SEC. 6. *And be it further enacted*, That whosoever shall apprehend and take one or more persons, guilty of burglary, or of stealing any horse or mule, or of robbing in any high way, or road in this territory, and shall prosecute him or them till he or they be convicted of any such offence, shall for every such offender so convicted, receive, within one month after such conviction and demand thereof made, a warrant on the territorial treasury for the sum of fifty dollars, which demand shall be accompanied by a certificate to the auditor of public accounts, from the court before whom such felon or felons shall be convicted. And in case any dispute should arise between the persons so apprehending any of the said thieves or robbers, touching their right to the said reward, then such court shall by their said certificate, direct and appoint the said reward to be paid in such shares and proportions as to them shall seem just and reasonable.

SEC. 7. *And be it further enacted*, That the person or persons so apprehending any offender, shall be competent to give testimony on the trial of such offender.

Poisoning, &c. in one county, and death in another.

SEC. 8. *And be it further enacted*, That where any person shall be feloniously stricken or poisoned in one county, and shall die of the same stroke or poisoning in another county, that then an indictment thereof found by jurors of the county or district where the death shall happen, whether it be found before the coroner or justice upon the sight of such dead body, or before any court having authority to inquire of such offences, shall be as good and effectual in the law, as if the stroke or poisoning had been committed and done in the same county where the party died, or where such indictment was found.

Poisoning, &c. in the territory, and death out of it, and vice versa.

SEC. 9. *And be it further enacted*, That where any person shall be feloniously stricken or poisoned at any place out of this territory, and shall die of the same stroke or poisoning within this territory; or where any person shall be feloniously stricken or poisoned at any place within this territory, and shall die of the same stroke or poisoning at any place out of this territory, an indictment thereof found by the jurors of the county or district, in which such death, stroke or poisoning, shall happen respectively as aforesaid, whether before the coroner or justice upon a view of the dead body, or before any court having authority to inquire of murders; shall be as good and effectual in law, against the principals and accessories, as if such felonious stroke and death, or poisoning and death, and the offence of such accessories, had happened in the same county where such indictment shall be found: and the circuit or superior court holden in such county shall and may proceed upon the same in all points, as they might or ought to do, in case such stroke, poisoning or death, had happened in the same county where such indictment shall be found.

Property stolen out of the territory.

SEC. 10. *And be it further enacted*, That any person or persons who shall steal or otherwise feloniously take any horse, or other goods and chattels, from any person in any place out of this territory, and shall afterward have the same, or any part of such goods and chattels, in his or their possession within this territory, may be indicted for horse-stealing or other larceny, in whatever county he or they may be so found with such horse or other goods and chattels as aforesaid; and any receiver of stolen property, knowing the same to have been stolen, may be indicted in any county in which he shall have such stolen property in his possession, although the same may have been originally taken beyond the limits of this territory.

Search warrant.

SEC. 11. *And be it further enacted*, That it shall be lawful for any one justice of the peace, upon complaint made before him upon oath, that there is reason to suspect that stolen goods are knowingly concealed in any dwelling-house, out-house, garden, yard, croft or other place or places, to issue a warrant under his hand, commanding every such dwelling-house or place to be searched in the daytime; and the person knowingly concealing such stolen goods or any part thereof, or in whose custody the same or any part thereof shall be found, such person being privy thereto, shall be deemed guilty of a misdemeanor, and shall be brought before any justice of the peace for the county or place, and made amenable to answer for the same, by like warrant of any such justice, and on conviction shall be punished by fine and imprisonment, or whipping, as the court shall think fit to inflict, although the principal felon be not before convicted of the said felony, and whether such felon be amenable to justice or not.

Receivers of stolen goods.

SEC. 12. *And whereas* it sometimes happens that the buyers and receivers of stolen goods convey away and conceal the principal felons, so that they cannot be convicted of such felony; and thereby such buyers and receivers escape all manner of punishment, which has greatly encouraged the buying and receiving of such stolen goods: *Be it therefore enacted*, that it shall and may be lawful to prosecute and punish every such person and persons, buying or receiving any stolen goods, knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, although the principal offender cannot be taken or be not convicted of the said felony, which shall exempt the offender from being punished as accessory, if the principal shall be afterward convicted.

Duty of jailer.

SEC. 13. *And be it further enacted*, That it shall be the duty of every sheriff and other person having authority or power of keeping a jail, or of prisoners for felony, to certify the names of all such prisoners in his keeping, and of every prisoner to him committed for any criminal offence, at the next court having cognizance thereof, there to be calendered before the judges for the deliverance of the said jail, whereby they may proceed to make deliverance of such prisoners according to law.

Family of the criminal.

SEC. 14. *And be it further enacted*, That whenever on any criminal prosecution, it shall appear to the satisfaction of the court, that there can be no reasonable expectation, that the family of the prisoner will be brought up in honest courses; it shall be the duty of such court to certify the same to the overseers of the poor for the district in which such family may reside, provided the same be within the limits of the jurisdiction of such court; and the said overseers shall thereupon bind out the children of such person, to honest, respectable and virtuous citizens, for the same periods of time and under the same conditions for their instruction and maintenance, as in other cases of orphans and poor children, and return the indentures to the next county court, and likewise certify to the said superior court, their doings therein.

Legal error not to bar trial.

SEC. 15. *And be it further enacted*, That no person accused of any criminal offence, shall be set at liberty and absolutely discharged before his trial on account of any mere irregularity or informality in the want of commitment, nor after conviction on account of any legal error, or imperfection in his indictment; but the same proceedings shall be had again as though he had never been arraigned: nor shall the words "force and arms," or the words "against the peace," or the words, "contrary to the form of the statute," be regarded as necessary in any indictment or information for any trespass or any other offence whatsoever, nor shall the parties indicted have any advantage by writ of error or plea or otherwise, for the want of these or the like words; but such indictments and informations shall be judged as effectual to all intents and purposes, as indictments and informations having the same words in them.

Penalty for composition with offender.

SEC. 16. *And be it further enacted*, That no informer or plaintiff other than the party grieved, shall or may compound or agree with any person or persons, that shall offend or that shall be surmised to offend any penal statute, for an offence committed or pretended to be committed, but after answer made in court unto the information or suit, in that behalf exhibited or prosecuted: nor after answer but by the order or consent of the court, in which the same information or suit shall be depending, on pain that whosoever shall offend in making composition, or other misdemeanor contrary to the true intent and meaning of this provision, or shall by colour or pretence of process, or without process; upon colour or pretence of any matter of offence against any penal law, make any composition or take any money, reward, or promise of reward, for himself or to the use of any other, without order or consent of the court aforesaid, and shall be thereof convicted shall stand on the pillory for any time not exceeding six hours, and for ever be disabled to pursue, or be plaintiff or informer in any suit or information, upon any statute popular or penal, and shall also forfeit and pay into the territorial treasury any sum not exceeding forty dollars.

Collusion.

SEC. 17. *And be it further enacted*, That if any person hereafter, sue with good faith any action popular, and any defendant in the same action plead any manner of recovery by action popular, in bar of the said action, or that he before time barred any plaintiff in any action popular: then the plaintiff in the action taken with good faith, may aver that the said recovery was had by collusion, or that the said plaintiff was barred by collusion: and if such collusion be lawfully found, the plaintiff who shall sue with good faith, shall have recovery according to the nature of the action, and execution upon the same, in like manner and effect, as if no such action aforesaid had been had: *Provided always*, That no plaintiff shall be permitted to aver any collusion in any action popular, where the point of the same action, or else the collusion has been once tried or lawfully found with the plaintiff or against him, by trial of twelve men, and not otherwise.

CHAPTER IV.

An Act to amend the Act for the Punishment of Crimes and Misdemeanors.

Passed December 16, 1811.

Attorney general to mark on all bills of indictment the name of the prosecutor.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That it shall hereafter be the duty of the attorney-general, to mark on all bills of indictment the name of the prosecutor, and if the territory shall fail in the prosecution, it shall be the duty of the court, if the prosecution appear frivolous, or malicious, to order the prosecutor to pay costs.

Branding unmarked horses, cattle, &c.

SEC. 2. *And be it further enacted*, That if any person shall be convicted of having marked or branded, with his mark or brand, any unmarked or unbranded horse, mare, colt, mule, ass, bull, cow, bullock, ox, steer, heifer, calf, hog, sheep, or goat, not being his or her own property, and without consent of the owner, the person so offending, shall forfeit and pay the sum of twenty dollars, to the owner thereof, for every such animal so

Forfeiture.

branded and marked, to be recovered by action of debt, before any justice of the peace, or in any other court having cognizance thereof: *Provided, nevertheless*, That if any person being in doubt as to the right of property, shall call in two of the neighbours next adjoining the range where such stock shall run, and in their presence, and with their approbation, mark and brand, or mark or brand, any such stock as aforesaid, he shall not be liable to the penalties contained in this section.

Proviso.

Altering or defacing the mark or brand of any horse, &c.

Sec. 3. *And be it further enacted*, That every person who shall be convicted by indictment, of altering or defacing the mark or brand of any horse, mare, colt, mule, ass, bull, cow, ox, steer, bullock, heifer, calf, hog, sheep, or goat, not being his or her property, and without the consent of the owner, shall, for every such animal, whose mark or brand shall have been so altered or defaced, forfeit and pay the value thereof, and also a fine of twenty dollars to the owner.

Forfeitures.

Sec. 9. *And be it further enacted*, That all acts and parts of acts, coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER V.

An Act to amend the Act for the Punishment of Crimes and Misdemeanors. *Passed December* 21, 1812.

Penalty for manslaughter.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That hereafter, any person who shall commit the crime of manslaughter, and be thereof convicted, such person shall be fined, branded in the hand with the letter M in open court, and stand in the pillory two hours, and be imprisoned not exceeding six months, and that the infliction of those punishments shall be at the discretion of the court, who may inflict one, or all, in their discretion.*

For adultery, &c.

Sec. 2. *And be it further enacted*, That if any man and woman shall live together in adultery, or fornication, it shall be the duty of any justice of the peace of the county in which said persons may live, if within their own knowledge, or upon information to them made on oath, that such man and woman do live in adultery, or fornication, to cause the said man and woman, or either of them, to be brought before him, and he shall bind them, or any one of them, over, to appear at the next term of the superior court of their county, and the attorney-general shall prefer a bill of indictment against such person or persons, and upon conviction thereof, they shall pay a sum not less than one hundred dollars, to be assessed by a jury; which fines shall be paid into the county treasury of the county where the offence was committed, for county purposes.

For aiding insurrections.

Sec. 3. *And be it further enacted*, That any free person who shall be aiding and assisting, or in any wise concerned with any slave or slaves, in any actual or meditated rebellion or conspiracy against the laws, government, or people of this territory; or shall in any manner advise, plot, or consult with any slave or slaves, for the purpose of encouraging, exciting, aiding, or assisting any such insurrection or rebellion, or intended insurrection or rebellion, such free person so offending, and being thereof convicted, shall suffer death.

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* The punishment was altered in 1814; see the next chapter.

[Sec. 4 authorized slaves to be bailed by their owners, but was repealed in 1814.]

Habeas corpus.

Sec. 5. *And be it further enacted,* That in all cases not capital, the chief justice of the orphans' court, where any person is imprisoned, may grant a writ of *habeas corpus,* in the same manner, and under the same regulations, as judges of the superior court are by law authorized to do: and such chief justice may discharge, admit to bail, or remand to jail, any prisoner brought before him, in the like manner as the judges of the superior court are by law authorized to do.

Penalty for forgery.

Sec. 6. *And be it further enacted,* That if any person or persons shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or shall willingly aid or assist in the false making, altering, forging or counterfeiting any letters patent, gift, grant, covenant, bond, writing obligatory, note of a bank of any one of the United States, or of any bank established by law in any one of the said states, or bank of any territory of the United States, or any bill, or order, or acceptance of such bill or order, cotton receipt, receipt for the payment of money, or other article of value, promissory note, bill of exchange, or acceptance thereof, will, indenture, or deed, or any instrument of writing whatever, to secure the payment or delivery of money, or other article of value, or in discharge of any debt or demand, with intention to defraud any person or persons, or any corporation or body politic; or shall utter, put off, or offer, or cause to be uttered, put off, or offered in payment, exchange, pledge, or for sale, any such false, forged, altered, or counterfeited bond, writing obligatory, note of a bank of one of the United States, or of any bank established by law, in any one of the said states, or bank of any territory of the United States, or any bill or order, or acceptance of such bill or order, cotton receipt, or receipt for the payment of money, or other article of value, promissory note, bill of exchange, or acceptance thereof, will, indenture, or deed, or any instrument of writing, or obligation whatever, to secure the payment or delivery of money, or other article of value, or in discharge of any debt or demand, with intention to defraud any person or persons, corporation, or body politic, knowing the same to be false, altered, forged, or counterfeited, and shall be thereof convicted, every such person shall suffer death.

Rebellion.

Sec. 7. *And be it further enacted,* That if any slave or slaves shall at any time consult, advise, or conspire to rebel, or make insurrection against the white inhabitants of this territory, or against the laws and government thereof, or shall plot or conspire the murder of any white person, or shall commit an assault and battery on any white person with an intent to kill, every such slave or slaves so consulting, advising, conspiring or plotting, or committing such assault and battery as aforesaid, with such intent to kill as aforesaid, being convicted thereof, shall suffer death.

SEC. 8. *And be it further enacted*, That the twenty-seventh section of the act, to which this is an amendment, and all other acts and parts of acts coming within the meaning of this act, be, and the same are hereby repealed.

NOTE.—The following Acts, viz. "An Act prescribing a Summary Mode for the Trial of Slaves," passed December 21, 1812.

"An Act to amend An Act prescribing a Summary Mode for the Trial of Slaves," passed January 15, 1814.

"An Act to amend the several Acts concerning the Trial of Slaves," passed December 17, 1819. And "An Act to Repeal in part, and amend an Act, entitled 'An Act to constitute a Court of Oyer and Terminer for the Trial of Slaves, and for other purposes,'" passed December 13, 1821, will be found under title "Courts Inferior."

CHAPTER VI.

An Act to amend an Act, entitled "An Act to amend an Act, entitled 'An Act for the Punishment of Crimes and Misdemeanors.'" passed the twenty-first of December, eighteen hundred and twelve.—*Passed December* 24, 1814.

Punishment in the case of manslaughter.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That hereafter, any person who shall commit the crime of manslaughter, and be thereof convicted, such person shall be fined in a sum not exceeding five hundred dollars, and be imprisoned not exceeding twelve months; and that the infliction of those punishments shall be at the discretion of the jury trying such offender, who may inflict one or both at their discretion, any law to the contrary notwithstanding.

Repealing clause.

SEC. 2. *And be it further enacted*, That the first section of the above recited act, be, and the same is hereby repealed: *Provided*, that all offences that shall be committed previous to the passage of this act, and punishable by the said section, may be proceeded on in the same manner as if this act had not passed.

CHAPTER VII.

An Act concerning Fugitives from Justice.—*Passed December* 24, 1814.

Fugitives from justice.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That when the executive authority of any of the United States or Territories thereof, shall demand any person as a fugitive from justice, of the executive authority of this territory, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any of the United States or territories as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from which the person so charged fled: it shall be the duty of the executive authority of this territory, to cause such person so demanded, if found within the territory, to be arrested and secured, and notice of the arrest to be given to the executive making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear, upon the condition that said agent shall pay all legal costs which may accrue in apprehending and imprisoning such fugitive, and the said agent shall be empowered to transport him or her to the state or territory from which he or she shall have fled: *Provided*, That if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged.

In what manner arrested and secured.

Sec. 2. *And be it further enacted*, That the executive authority of this territory shall have power and authority to demand and receive any person as a fugitive from justice, of the executive authority of any of the United States or the other territories thereof, to which such person shall have fled, in the same manner and under the same rules and regulations as prescribed by the foregoing section.

Executive empowered to demand fugitives, &c.

CHAPTER VIII.

Extracts from "An Act to Revise, Amend, and Consolidate the several Acts relative to Justices of the Peace, and Constables.—*Passed December 27*, 1814.

Sec. 20. *And be it further enacted*, That justices of the peace and of the quorum shall have power and authority to take all manner of recognizances, with or without security, for good behaviour, to keep the peace, or for appearance at the superior court, as the case may be, to answer to charges exhibited, or crimes committed in the view of such justices, or any of them, and whereof they have not competent power to hear and determine; and in case any person or persons shall refuse to enter into recognizance as aforesaid, and to find security when thereunto required, it shall and may be lawful for such justice or justices to commit the person so refusing to jail, there to remain until he shall comply with the order of such justice or justices; and all recognizances for the peace, good behaviour, or appearance at any court, or for suspicion of any manner of crime, shall be certified before the superior court of the county to be holden next after the taking thereof, without concealing or detaining the same: and if any person shall forfeit his recognizance of the peace, good behaviour, or appearance, the recognizance so forfeited, with the record of default or cause of forfeiture, shall be sent and certified without delay by such justice or justices into such court.

Justices to take recognizances of public offenders,

or commit to jail;

Recognizances to be returned to court.

And also forfeitures thereof.

Sec. 21. *And be it further enacted*, That such justice of the peace or of the quorum, or any of them, as are now in commission or may hereafter be commissioned by the governor, shall

Justices to issue warrants against public offenders to commit or bind over. To issue search warrants, but not to try right of property, which, if contested, to remain with the person possessed thereof, unless he fail to give bond.

by warrant under their hand and seal, cause any person charged on oath of having committed, or being suspected of any felony, or other crime or misdemeanor, to be apprehended and brought before him; to commit such person to jail where the offence is not bailable, or where the offender is either unable or unwilling to give bail to appear and answer to the crime alleged against him or her; to take the recognizance or recognizances of any person charged with any crime not punishable with death, with sufficient security to appear at the next superior court of his or her county and answer the charge; and the recognizance or recognizances of prosecutors and witnesses, and to issue search warrants for stolen goods, on the oath of some credible person, particularly describing the place suspected and intended to be searched; *provided*, that in no case whatever, shall any justice of the quorum or of the peace, try the right of any property alleged to have been stolen; but in all such cases where the property so alleged to be stolen is claimed by two or more persons, the justice of the quorum or of the peace, shall require of the person in whose possession the same was found to give security for the forthcoming of the property at the next term of the superior court, to abide the judgment or decision of said court, and in case such person does not give the security required by this act, then the justice may deliver the property to any other person upon their entering into the like bond and security.

Justices to take examination of offenders, and information of witnesses. To inform prisoner that he may ask questions. All which to be returned to court. Penalty for neglect of duty.

SEC. 22. *And be it further enacted*, That when any person charged with felony, breach of the peace, or other crime, be brought before any justice of the quorum or of the peace, such justice shall immediately proceed to take the voluntary information of the accused in writing, and the information on oath, of all witnesses that appear against him or her, touching the crime alleged to be committed; and it shall be the duty of said justice, to inform the accused of his or her privilege to ask any question he or she may think proper, which questions with their answers, shall be reduced to writing by said justice, and it shall be the duty of said justice, to send up the recognizance or recognizances of the accused, the prosecutor and of the witnesses, with the information of the accused and of the witnesses to the next superior court of their county, and any justice failing so to do, shall be fined in a sum not exceeding fifty dollars, to be recovered on motion of the attorney-general in the superior court on three days previous notice of such motion.

If offenders remove or escape into another county, warrant to run, and offender to be taken back.

SEC. 23. *And be it further enacted*, That when any person charged with any criminal offence, removes or escapes from the county where such offence is alleged to be committed, into another county, it shall be the duty of any justice of the county to which such person may have removed or escaped, on proof of the handwriting of any justice of the county where the offence was committed, to endorse any warrant issued by him, which shall be a sufficient authority for arresting such offender in any place within the jurisdiction of such justice, and such criminal shall be conveyed for examination to some justice of the quorum or of the peace, within the county where the offence is charged to have been committed, and subpœnas for witnesses may issue to any county, on the part of the territory, where it is necessary for bringing an offender to justice, which shall be executed by some officer authorized to execute process in said county, where such witness may reside; and any justice of the county to which any offender may have removed or escaped, on the oath of any credible person, may arrest and have conveyed to the proper county for examination, any person charged with felony or other crime.

Subpœnas may issue to any county.

Any justice may issue warrant and convey offender to proper county.

Sec. 24. *And be it further enacted*, That no justice of the peace or of the quorum, for any contempt offered to him, shall have power to order or inflict, or cause to be inflicted any fine exceeding the sum of six dollars, nor any imprisonment exceeding six hours, and then only when such contempt shall be offered whilst such justice is sitting in judgment, and if any justice of the peace or of the quorum shall offend herein, he shall be deemed guilty of a misdemeanor in office, and shall moreover be subject to the action of the party injured, for damages to be assessed by a jury.

Justice's power to fine, &c.

CHAPTER IX.

An Act to amend and alter the Laws for the Punishment of Crimes and Misdemeanors.—*Passed February* 13, 1818.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That from and after the passage of this act, in all prosecutions for capital offences, it shall and may be lawful, for the attorney-general, or the person acting as such, to challenge a juror for good cause only, and it shall not be lawful for any peremptory challenge to be made to a juror, on the part of the territory.

Attorney general to challenge juror for good cause only.

Sec. 2. *And be it further enacted*, That so much of an act entitled, "An Act for the Punishment of Crimes and Misdemeanors," as requires that the prisoner should be furnished with a list of the jury who are to pass on his trial, two entire days previous to such trial, shall be so construed as not to disqualify any person who may be summoned as a talesman, in case of a deficiency of jurors of the pannel, with a copy which such prisoner may have been served.

Construction relative to talesmen.

CHAPTER X.

Extracts from an "Act for the Government of Gin Holders, and for other purposes."—*Passed November* 16, 1818.

Note.—The preceding Sections of this Act will be found under the title "Trade and Commerce."

Sec. 4. *And be it further enacted*, That any person or persons who shall commit any fraud in the packing or bailing of cotton, by placing good cotton on the outside of such bale (commonly called plating) when the interior part thereof is composed of inferior cotton, or by putting and mixing with the cotton, contained in any bail, any other material or substance than ginned cotton, shall be liable to prosecution by indictment; and on conviction, shall be fined in such sum as the jury trying the same may deem proper, and moreover be imprisoned at the discretion of the court, not exceeding thirty days, besides double damages to be recovered at the suit of the party aggrieved.

CHAPTER XI.

An Act excluding from Suffrage, serving as Jurors, and holding offices, such persons as may be convicted of Bribery, Forgery, Perjury, and other high Crimes and Misdemeanors.—*Passed November 27, 1819.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, any person who may be convicted of bribery, forgery, perjury, or any other high crime or misdemeanor, shall be disqualified from holding or exercising any office under the authority of this state, from serving in any case as a juror, and from voting at any election.

CHAPTER XII.

An Act to prevent the Frauds and Fraudulent Combinations, in the Sale of Public Lands within this State.—*Passed December 17, 1819.*

No person may take money for not bidding for lands.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the first day of January, one thousand eight hundred and twenty, it shall not be lawful for any person or persons, either directly or indirectly, or by any deceitful way or means whatsoever, to take or receive any money or other thing of value from any person or persons, for not bidding for any of the public lands within this state.

No person to bid off lands for another.

SEC. 2. *And be it further enacted,* That if any person or persons shall bid off any of the public lands within this state, under an agreement previously entered into, to transfer the same or any part thereof for a premium or an advance to be paid therefor, and shall transfer the same or any part thereof, in pursuance of such agreement, and shall take or receive any premium or reward, or other thing of value for so doing, he, she, or they, shall be deemed guilty within the true intent and meaning of this act:

Proviso.

Provided nevertheless, this act shall not be construed, so as to extend to any agreement or contract, which may be made without intent to violate or evade the provisions of this act, whereby any person or persons shall be employed and furnished with funds to purchase lands for others.

Certain contracts void.

SEC. 3. *And be it further enacted,* That all contracts entered into for the payment of money, or for securing the payment thereof, or from which a benefit might accrue to the obligee or his assignee, for not bidding for any of the public lands within this state, or for giving a premium or reward for bidding off any of the public lands within this state, under a previous agreement to transfer the same, are hereby declared to be null and void to all intents and purposes whatsoever.

No person may take a premium for not bidding.

SEC. 4. *And be it further enacted,* That if any person or persons shall take or receive any money or other thing of value, directly or indirectly, or by any deceitful ways or means whatsoever, for the purpose of evading this act, for not bidding for any of the public lands within this state, or for bidding off any of the public lands within this state, under an agreement previously entered into to transfer the same or any part thereof as aforesaid, he, she, or they, so offending, shall forfeit and pay for every such offence, double the value of the money or other things so taken or received as aforesaid, to be recovered by action of debt, or on the case, one half to the use of him or them that will sue for the same, and the other half to be paid into the public treasury, for the use of the state.

Violators of this act may be indicted.

SEC. 5. *And be it further enacted,* That if any person or persons shall violate the provisions of this act, he, she, or they, shall be liable to be indicted, and upon conviction thereof shall be fined, in a sum not exceeding two thousand, nor less than three hundred dollars, and be imprisoned for a term, not less than three, nor more than twelve months, at the discretion of the court before whom he, she, or they shall be tried: *Provided, nevertheless,* that no person shall be convicted on the evidence alone of either party concerned in any contract or agreement, mentioned in this act.

Remedial statute.

SEC. 6. *And be it further enacted,* That this shall be deemed a remedial statute, and shall receive a liberal construction; and that the superior court shall have exclusive jurisdiction of all offences against this act.

Grand jurors may procure witnesses.

SEC. 7. *And be it further enacted,* That it shall be the duty of the grand jurors in the several counties in this state, when they believe an offence has been committed against the provisions of this act, to apply to the court which they are summoned to attend, to issue a subpœna or subpœnas returnable *instanter*, for witnesses to appear before them and give evidence, in the same manner as witnesses now do, on bills of indictment, in such cases as it may be their duty to inquire.

Improvements may be sold.

SEC. 8. *And be it further enacted,* That nothing contained in this act shall be so construed, as to prevent any person, who has made improvements on the United States lands, from having the right to sell his right to the same, and recover for such consideration.

Judges and justices may bind over offenders.

SEC. 9. *And be it further enacted,* That it shall be the duty of the judges of the several courts in this state, and justices of the peace, upon information by affidavit, to issue their warrant or warrants, to bring before them, or any other judge or justice having cognizance of the same, any person or persons, who has violated any of the provisions of this act; and they are hereby directed and required, to bind any such offender or offenders to appear at the next circuit court to be holden for the county, in such sum as may be deemed proper; to answer the prosecution of the state, under such other regulations as are usual in criminal cases.

CHAPTER XIII.

Extracts from an Act to alter and enlarge the Terms of certain Circuit Courts in this State.—*Passed December* 21, 1820.

Challenge of jury.

SEC. 10. *And be it further enacted,* That in all jury trials, either party may and shall have the rights to a peremptory challenge of four of the jury.

Offenders to be tried on indictments.

SEC. 11. *And be it further enacted,* That hereafter it shall and may be lawful to try offenders, by indictment, in all cases which are now required by law to be tried on presentment.

Compensation of jurors.

SEC. 12. *And be it further enacted,* That hereafter, each and every grand juror, and juror of the original pannel, shall be entitled to receive one dollar for each and every day he may serve as such, and mileage as heretofore allowed; which shall be paid out of any moneys in the county treasury, on the certificate of the clerk, of his having served as such; and in case there should not be funds in the county treasury for the payment of such demands, the certificate of such juror shall be receivable by the collector of taxes for county purposes, in their respective counties.

CHAPTER XIV.

An Act for the Punishment of Malicious Mischief.—*Passed December* 17, 1821.

Offences enumerated.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, any person or persons who shall unlawfully, wilfully, maliciously, and secretly kill, wound, or disable any horse, mare or gelding, colt or filly, jack, jinny or mule, or any goat, sheep, or cattle, or any hog, or live stock of any kind or description whatsoever, belonging to any other person or persons, or shall unlawfully, wilfully, maliciously, and secretly, burn or otherwise destroy any ricks or stacks of hay, fodder or grain in the sheaf, or shall unlawfully, wilfully, maliciously, and secretly destroy or injure so that the same shall be unfit for use, any cotton, corn, or other article or commodity of value, or any goods, wares, or merchandise, or any timbers or frame prepared for building, belonging to any other person or persons; or shall unlawfully, wilfully, maliciously, and secretly break, throw down, destroy any fence or enclosure, or break, cut, or carry away from its mooring or landing, or destroy any flat, boat, or other water craft, belonging to any other person or persons, every person or persons so offending, shall, on conviction of any of the aforesaid offences, by sufficient and satisfactory testimony in any circuit court having jurisdiction of the same, be fined in such sum as the jury trying the case may

Person convicted, fined.

assess, not exceeding four-fold the value of the property injured or destroyed, which fine shall be paid as a recompense to the party aggrieved.

CHAPTER XV.

An Act, prescribing the manner of Changing the Venue in Criminal cases, and for other purposes.—*Passed December* 18, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, it shall be lawful for the judges of the circuit courts, respectively, to grant to any person charged with a criminal offence, a change of venue for sufficient cause shown at any time, either at the first trial term, or if the case should be continued, or a new trial had after conviction, at any subsequent term: *Provided,* that no change of venue shall be allowed more than once.

SEC. 2. *And be it further enacted,* That it shall be lawful in issues made up for the purpose of trying the right to any property taken in execution, for the judge trying such case to grant continuances upon good cause shown, as in other cases, any law to the contrary notwithstanding.

[The third and fourth sections relate to the three ticket lottery, and will be found under title 31, "Gaming."]

SEC. 5. *And be it further enacted,* That this act shall commence and take effect from and after the first day of January, one thousand eight hundred and twenty-two.

NOTE.—The Laws concerning "Duelling" and "Gaming," will be found under their respective titles.

CHAPTER XVI.

An Act to repeal in part the Statute of Limitations in Criminal Cases.—*Passed December* 24, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That so much of the statute of limitations as prevents prosecutions for polygamy, perjury, and subornation of perjury, unless commenced within a year after the time of the alleged offence, be, and the same is hereby repealed.

SEC. 2. *And be it further enacted,* That the prosecutions for the aforesaid offences, shall be commenced within five years, and not thereafter, after the commission of the alleged offence.

CHAPTER XVII.

An Act to prevent Criminal and Disorderly Conduct at places of Religious Worship.—*Passed December*

NOTE.—This Act will be found under title 41, chapter 22.

DEEDS AND CONVEYANCES.—1803.

NOTE.—In the ordinance for the government of the Territory north-west of the river Ohio, which afterward became the law for the government of the Mississippi territory, it was provided that real estates might be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate might be, and attested by two witnesses; Provided, such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after, and that proper magistrates courts, and registers should be appointed for that purpose. It also provided that personal property might be transferred by delivery. It does not appear that any act of the territorial legislature was passed on this subject, till the year 1803.

CHAPTER I.

An Act respecting Conveyances.—*Passed March* 4, 1803.

Conveyances to be received in evidence.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That if any deed or conveyance of lands, tenements, or hereditaments, lying and being in this territory, heretofore made and executed, and not already acknowledged or proved, according to law, or hereafter to be made and executed, shall be acknowledged by the party or parties, who shall have executed it; or be proved by one or more of the subscribing witnesses to it, that such party or parties, signed, sealed and delivered the same, as his, her, or their voluntary act and deed, before one of the judges of the superior court of this territory, or one of the justices of any county court of that county, in which the lands, tenements, and hereditaments are situated; and if a certificate of such acknowledgment, or proofs, shall be written upon, or under the said deed, or conveyance, and be signed by the person, before whom it was made, then every such deed or conveyance so acknowledged, or proved, and certified, shall be received in evidence in any court of this territory, as if the same were then and there produced and proved.

Record of same.

SEC. 2. *And be it further enacted*, That no conveyance of lands, tenements, or hereditaments, lying and being in this territory, which has been made and executed, and not already acknowledged or proved, according to law; or which shall be made and executed, shall be recorded in any clerk's office in this territory; unless the execution of the same shall have first been acknowledged, or proved and certified, in the manner herein directed.

Estate of *feme coverts.*

SEC. 3. *And be it further enacted*, That no estate of a *feme covert* in any lands, tenements, or hereditaments, lying and being in this territory, shall hereafter pass by her deed or conveyance, without a previous acknowledgment made by her, on a private examination, a part from her husband, before one of the territorial judges, or one of the justices of the county court, that she signed, sealed, and delivered the same, as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband and a certificate thereof, written on, or under the said deed, or conveyance; and signed by the officer, before whom it was made, and further, that every deed or conveyance so executed and acknowledged, by a *feme covert*, and certified as aforesaid, shall release and bar her right of dower, and be good and effectual to convey the lands, tenements, and hereditaments thereby intended to be conveyed: *Provided*, That this clause shall not be construed to enable any *feme covert*, under the age of twenty-one years, to convey lands, tenements, or hereditaments, or any right of dower, interest or estate therein.

Absent conveyors.

SEC. 4. *And be it further enacted*, That if the party who shall execute any deed or conveyance of lands, tenements, or hereditaments, lying and being in this territory, or the witness thereto, reside not in this territory, but in some other territory or state in the union; then the said acknowledgment or proof, made before, and certified by the chief justice of the United States, or any associate justice of the supreme court of the United States, or a district judge of the same; or any judge or justice of the supreme or superior court of any territory or state in the union, shall be as good and effectual, as if it had been made before, and certified by one of the judges of the supreme court of this territory.

SEC. 5. *And be it further enacted*, That if the party, who shall execute any deed or conveyance of lands, tenements, or hereditaments, lying and being in this territory, or the witnesses thereto reside in a foreign kingdom, state, nation or colony; then the said acknowledgment, or proof, made before any court of law, or mayor, or other chief magistrate of any city, borough, or corporation of the said foreign kingdom, state, nation or colony, in which the said party or witnesses reside, certified by the said court, mayor, or chief magistrate, in the manner such acts are usually authenticated by them, or him, shall be as good and effectual as if it had been made before, and certified by one of the judges of the supreme court of this territory.

SEC. 6. *And be it further enacted*, That the two preceding sections of this act shall be construed to extend to, and comprehend acknowledgments of deeds or conveyances, which shall be made by *femes covert* who reside out of this territory, and in any other territory, or state in the union; or in any foreign kingdom, state, nation or colony.

[*SEC. 7. *And be it further enacted*, That every deed or conveyance of lands, tenements or hereditaments, lying and being in this territory, which shall be made and executed from and after the passing of this act, shall be void, and of no effect, against a subsequent *bona fide* purchaser or mortgagee, for a valuable consideration, not having notice thereof; unless such deed or conveyance shall be acknowledged, or proved and certified, as by this act is directed, and be lodged (within twelve calendar months) after the time of signing, sealing and delivering the same, with the clerk of the county court of the county in which the said lands, tenements, or hereditaments are situated; to be recorded by the said clerk: *Provided nevertheless*, That such deed or conveyance, shall, as between the parties, and their heirs, be valid and operative.]

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* This section is repealed in an act passed December 7, 1811; and the time for recording deeds made after the said December 7, 1811, is reduced to three months. But this section is retained on account of its operation on conveyances made antecedent to that date.

In case granter or witness be dead.

SEC. 8. *And whereas*, It is necessary that provision should be made for proving deeds, or conveyances of lands, tenements, or hereditaments, where the granters and witnesses are dead: *Therefore be it enacted*, That if the granter or witnesses of any such deed or conveyance, be dead, or cannot be obtained, it shall be lawful for any of the officers herein before mentioned, as the case may require, to take under oath or affirmation, the examination of any person or persons, to prove the handwriting of such deceased witness or witnesses; or where such proof cannot be had, then to prove the handwriting of such grantor or grantors, which shall be certified on, or under such deed or conveyance, and signed by the officer, before whom such proof shall have been made; and such deed or conveyance, so proved and certified, shall be received in evidence, and be recorded by the clerk of the county court of the county in which the said lands, tenements or hereditaments are situated; in the same manner as other deeds or conveyances are directed by this act.

Records, how made.

SEC. 9. *And be it further enacted*, That the clerk of the county court shall record, in large well bound books, of good paper, to be provided for that purpose, and carefully preserve all deeds and conveyances of lands, tenements, and hereditaments, lying and being in said county, acknowledged or proved, and certified to have been acknowledged or proved in manner aforesaid, which shall be delivered to him to be recorded; to which books every person shall have access at proper seasons, and be entitled to transcripts from the same, on paying the fees allowed by law.

Duty of the Clerk.

SEC. 10. *And be it further enacted*, That it shall be the duty of the clerk to record in the said book, without delay, every such deed or conveyance, with the acknowledgments, proofs, and certificates written on or under the same, and the plots of surveys, schedules, and other papers therein referred to, and annexed, by entering them word for word in a fair hand, and mentioning in the margin or at the foot of such record, the day of the month and the year when the said deed or conveyance was delivered to him, or brought to his office to be recorded.

SEC. 11. *And be it further enacted*, That the said clerk shall give a receipt to the person who shall bring any such deed or conveyance, mentioning therein the time it was delivered to him, or brought to his office to be recorded, the date, the names of the parties to it, and the place where the lands, tenements, and hereditaments therein specified are situated; that the said clerk shall certify on or under such deed or conveyance, the day of the month and year when he received it, and the name or number of the book, and page or pages in which it is recorded; and shall when recorded, deliver it to the party entitled to it, or his order.

Penalty for neglect.

SEC. 12. *And be it further enacted*, That if any clerk shall neglect or refuse to perform any service or duty required of him by this act, he shall for every neglect or refusal, forfeit and pay two hundred dollars, to be recovered with costs by action of debt, to be brought in the name of the county treasurer, to and for the use of the county; and shall also be liable for all damages which the party aggrieved may have sustained by reason of the non-performance of such service or duty.

SEC. 13. *And be it further enacted*, That if the original deed or conveyance be lost, or mislaid, or be destroyed by time or accident, and not in the parties power to produce; the record of such deed or conveyance, and the transcript of such record certified to be a true transcript, by the said clerk in whose office the record is kept, shall be received in evidence in any court in this territory, and be as good and effectual and available in law, as if the original deed or conveyance were then and there produced and proved.

Clerk to give bond.

SEC. 14. *And be it further enacted*, That every person who has received the appointment of clerk of any county of this territory, and now acts as such, shall on or before the first day of June next, (and every person who shall hereafter be appointed clerk of any county court of this territory, shall, before he enters upon the duties of his office,) give bond to the governor of this territory, and to his successors in office, with two sufficient freeholders in the county, to be approved of by the said court, or any three justices thereof, in the sum of three thousand dollars, with condition for the delivery of the said records, books, and other writings, entire and undefaced to his successor in office; and for the faithful performance of the duties required by this act; which bond the said court or justices shall deliver to the secretary of this territory, to be by him filed in his office; and if such clerk shall refuse or neglect to give bond as aforesaid, on or before the first day of June next, or he who may be hereafter appointed, for the space of thirty days after having received notice of his appointment, he shall be removed from office.

SEC. 15. *And be it further enacted*, That every person who shall be appointed to the clerkship of any county court, shall, on receiving the book or books in which such deeds and conveyances are recorded, sign and acknowledge a receipt for the same, before one of the justices of the said court, whose duty it shall be to deliver the said receipt to the secretary of the territory, to be by him filed in his office.

In case of the death, removal, &c. of clerk.

SEC. 16. *And be it further enacted*, That upon the death, removal, or resignation of any clerk of any county court, the seals, minutes, papers, deeds, writings, documents, records, and books of, or belonging to such office, shall be delivered to his successor in office, on the oath or affirmation of the preceding clerk; or in case of his death, on the oath or affirmation of his executors or administrators. And if such clerk, his executors or administrators, shall refuse or neglect to deliver the same on oath or affirmation as aforesaid, being demanded by his successor in office, then every such person shall forfeit and pay five hundred dollars, to be recovered with costs, by action of debt, in the name of the county treasurer, for the use of the county.

No record to be removed.

SEC. 17. *And be it further enacted*, That no record shall be removed by writ of subpœna, or otherwise, before any court out of the county in which such record is kept, when a transcript thereof may be given in evidence.

Grant, &c. effectual without attournment of tenant.

SEC. 18. *And be it further enacted*, That every grant or conveyance of messuages, lands, tenements, and hereditaments; or of rent, or of reversion or remainder of messuages, lands, tenements, and hereditaments, shall be good and effectual without attornment of the tenant: but no tenant, who before notice of such grant or conveyance, shall have paid the rent to the grantor, shall be prejudiced, or suffer any damage by such payment.

Warranties.

SEC. 19. *And be it further enacted*, That all warranties by any tenant for life, shall be void against those in remainder or reversion.

What shall be an express covenant.

SEC. 20. *And be it further enacted*, That in all deeds, to be recorded in pursuance of this act, whereby any estate of inheritance in fee-simple, shall hereafter be limited to the grantor or his heirs, the words, grant, bargain, sell, shall be adjudged an express covenant to the grantee, his heirs and assigns, to wit: that the grantor was seized of an indefeasible estate, in fee-simple; freed from incumbrances, done, or suffered from the grantor, (except the rents and services that may be reserved) as also for quiet enjoyment against the grantor, his heirs and assigns; unless limited in express words contained in such deed; and that the grantee, his heirs, executors, administrators and assigns, may in any action, assign breaches, as if such covenants were expressly inserted. *Provided always*, that this law shall not extend to leases at rack-rent, or to leases not exceeding one and twenty years; where the actual possession goes with the lease.

Forgery and perjury.

SEC. 21. *And be it further enacted*, That if any person shall forge any entry of the acknowledgments, certificates, or endorsements, whereby the freehold or inheritance of any man may be charged, he shall be liable to the penalties against forgers of false deeds. And if any person shall perjure himself, in any of the cases herein above mentioned, he shall incur the like penalties, as if the oath or affirmation had been in any court of record.

On discharge of mortgage.

SEC. 22. *And be it further enacted*, That any mortgagee of any real or personal estates in this territory, having received full satisfaction and payment, of all such sum or sums of money, as are really due to him by such mortgagor, shall, at the request of the mortgager, enter satisfaction upon the margin of the record of such mortgage, recorded in the said office; which shall for ever thereafter, discharge, defeat and release the same; and shall likewise bar all actions brought, or to be brought thereupon.

And if such mortgagee, by himself or his attorney, shall not within three months after request and tender made for his reasonable charges, repair to the said office, and there make such acknowledgment, as aforesaid, he, or she, neglecting so to do, shall for every such offence, forfeit and pay unto the party or parties aggrieved, any sum not exceeding the mortgage money; to be recovered in any court of record, by bill, plaint, or information.

Spanish records, how preserved, &c.

SEC. 23. *And whereas*, no legal provision hath been had for the safe keeping, preserving and certifying the records and papers of the office of clerk's and recorders, which were kept during the administration of the Spanish government: *Be it therefore enacted*, that the governor shall immediately after the passing of this act, appoint and commission some person properly qualified, to keep, translate, and preserve the same: and the said officer so appointed, is hereby authorized to give copies of all and singular the said papers and records, whenever thereunto required; and certify the same under his hand and official seal; for which he shall receive a fee of twenty-five cents for every hundred words: and the person so appointed, before he enters upon the exercise of his office, shall give bond and security, payable to the governor, and his successors in office, in the penal sum of five thousand dollars; conditioned for the safe keeping of the said papers and records, and the faithful discharge of his office; which bond shall be lodged in the hands of the secretary of this territory; and may be put in suit by the party or parties injured, in his or their own names; and shall not become void upon the first recovery: but may from time to time, be put in suit, by action of debt, until the whole penalty be recovered.

Estates in land.

[*SEC. 24. *And be it further enacted*, That every estate in land, which shall be hereafter granted, conveyed or devised, although other words heretofore necessary to transfer an estate of inheritance be not added; shall be deemed a fee-simple if a less estate be not limited by express words, or do not appear to have been granted, conveyed or devised by construction or operation of law.]

CHAPTER II.

An Act for the more easy partition of Lands, held by Coparceners, Joint Tenants, and Tenants in Common.—*Passed March* 4, 1803.

Coparcener, joint tenant, &c. may apply for a partition.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That any person being a coparcener, joint tenant, or tenant in common, in any tract or tracts of land within

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[*] This section was introduced in 1807, but was repealed in 1812. See under this title, chapter 5, section 6.

this territory, may at any time apply to any one or more of the judges of the superior courts of this territory; or to any three or more of the justices of the county court, wherein such lands may lie, for a partition of such tract or tracts of land: whereupon the said judge or justices, shall ascertain the number of equal shares or parts, in which such tract or tracts were, or (at the time of such application) are held by the original coparceners, joint tenants, or tenants in common; and shall nominate three persons, not interested in the said land, as commissioners, to make partition of such tract or tracts, into as many parts or shares, as the same was originally held: and the said judge or judges, or justices, shall thereupon order an advertisement to be inserted in one of the public newspapers of this territory; and in any such other public newspapers or places, as the judge, judges, or justices shall direct; for six weeks successively: to the following or like effect: he or they making such alterations or additions as the nature of the case may require.

By esquire, chief judge (or judges) of the superior courts of the Mississippi Territory, or justices of the county court, of the county of notice is hereby given, that on application to me (or us) by of : who claims an undivided part of all that tract of land (giving a description of the tract or tracts intended to be divided,) I (or we) have nominated A B, C D, and E F, commissioners to divide the said tract or tracts of land, into equal shares or parts; and unless proper objections are stated to me (or us) at , on the of next, (which is to be at least two months from the date of the notice) the said A B, C D, and E F, will then be appointed commissioners, to make partition of the said lands, pursuant to an act entitled "an act for the more easy partition of lands held by coparceners, joint tenants, and tenants in common;" passed the 4th day of March, 1803.

Given under our hands this day of

Judges, &c. to appoint commissioners.

SEC. 2. *And be it further enacted*, That if no objections are made before the said judge or judges, or justices, on the day appointed by him or them, for the purpose, to the persons nominated as commissioners; then the said judge or judges, or justices, shall in writing under his or their hands and seals, appoint the persons so nominated, to be commissioners, to divide the said land, pursuant to the directions prescribed in this act: and the judge or judges, or justices, shall in the said writing describe the tract or tracts to be divided; and direct the number of parts or shares, into which the same is to be allotted; but if objections are made to the persons nominated as commissioners, or any of them, the said judge or judges, or justices, shall then proceed to hear and determine such objections; and in case he or they find them well founded, then to appoint under his or their hands and seals, other fit and disinterested persons, in the room of those he or they may think proper to remove.

Commissioners to take oath.

SEC. 3. *And be it further enacted*, That the commissioners so appointed, before they proceed to the execution of the powers and authority vested in them by this act, shall be severally sworn or affirmed, before one of the judges of the superior court, or any justice of the county court, that they will honestly, faithfully, and impartially make the partition intended, and perform the trust, duties, and services required of them by this act, to the best of their skill, knowledge, and judgment.

Mode of division.

SEC. 4. *And be it further enacted*, That the commissioners shall cause a survey to be made in their presence, of the tract or tracts to be divided, and shall then proceed to divide the same into the number of parts or shares, directed by the said judge, or judges, or justices, in the writing containing their appointment; each part or share to contain one or more lots, as the commissioners may think proper; they having due regard in the partition, to the situation, quantity, quality, and advantages of each part or share; so that they may be equal in value, as nearly as may be; and if the bounds of any tract or tracts, so to be divided, shall be controverted, the commissioners are hereby directed, if such controverted part is valuable, to separate the same from the incontroverted part, and to make partition of the tract or tracts in such manner, that a proportion of the controverted part may be allotted to each share, as well as a portion of the incontroverted part. And the said commissioners, previous to the said survey, shall administer an oath or affirmation to the surveyor and chain-bearers, that they will well and truly perform their respective duties honestly and impartially: which oath or affirmation, any one of the said commissioners is hereby empowered to administer.

Allotment.

SEC. 5. *And be it further enacted*, That the said commissioners shall number the several parts or shares, by them laid off, from one progressively; and shall in the same manner number each lot in the several shares, if the same contain more than one lot; and shall make a true field-book, specifying the bounds and numbers of each lot; and also a map or maps of the tract or tracts, on which the several shares or lots shall be laid down and numbered: and shall keep an exact and particular account of their time expended in the execution of the duties of this act, and of the money due for the same: and also of all expenses accruing for surveying, or otherwise, agreeably to the directions of this act. And the said commissioners shall thereupon give notice by advertisement, in manner aforesaid, for three weeks successively, that on a certain day, by them named, not less than one month from the date of such notification, attendance will be given, at a place therein mentioned, and an allotment by ballot take place, of the several parts or shares, of the tract or tracts, therein described, to the original coparceners, joint tenants, and tenants in common, their heirs or assigns.

SEC. 6. *And be it further enacted*, Than on application made to the said judge, or judges, or justices, by any one of the parties, to the partition intended to be made, the said judge, or judges, or justices, shall attend at the time and place specified in the advertisement of the commissioners, and shall, with the assistance of the said commissioners, proceed to allot the several parts or shares of the tract or tracts intended to be divided in the manner hereinafter to be described. But if no application shall be made to the said judge, or judges, or justices, for his or their attendance, then the said commissioners shall on the day appointed for the purpose, proceed in a public manner, to number as many tickets as there are shares of land marked on the map: which shall be put in a box, and the names of the original coparceners, joint tenants, or tenants in common, shall be put in separate tickets, into another box; when a person appointed by the said judge, or judges, or justices, or commissioners, shall proceed to draw a ticket of the names, and then a ticket of the numbers, and so proceed until all the tickets are drawn: and the share on the map bearing the number of the ticket drawn, next after drawing the ticket with the name, shall be the separate and divided share of that original coparcener, joint tenant, or tenant in common, his or her heirs or assigns, in the land so divided: of which balloting the said judge, or judges, or justices, or commissioners, shall make a full and ample certificate, under his or their hands and seals: specifying particularly the time, place, and manner of balloting, and the said allotment of the shares.

Precept for witnesses.

SEC. 7. *And be it further enacted*, That the said judge, or judges, or justices, or the said commissioners, are hereby authorized, as the case may require, to issue his or their precept, or precepts, under his or their hands and seals, commanding such person or persons, who are able to give any necessary information, to come before him or them; when and where he or they may direct, to testify, by an oath or affirmation, such acts, matters, or things, as it may be necessary for the said judge, or judges, or justices, or commissioners, to investigate in execution of the trust, duties, and services required of them by this act; and to bring with him or them all such patents, surveys, maps, records, deeds, or other writings, as may be necessary to be examined, by the said judge, or judges, or justices, or commissioners.

truments be record

SEC. 8. *And be it further enacted*, That the commissioners shall transmit the writing, containing their appointment, and their oath, or affirmation of office, properly certified by the person administering the same, and the map and field-book; and also their accounts, to the judge, or judges, or justices, from whom they received their appointment; or in case of their death, resignation, or removal, then to any other judge, or judges, or justices, of the same court, who after inspecting the same, shall order the said instruments, excepting the account of expenses, to be recorded in the clerk's office of the superior court, or in the clerk's office of the county court, in which the lands lie; which shall be good evidence of such partition, and which partition shall be as valid and effectual, in law, to divide and separate the said lands, as if the same had been made on writs of partition, according to the course of the common law.

Compensation of officers.

Sec. 9. *And be it further enacted*, That the said judge or judges shall be allowed for the services required by this act, at the rate of two dollars and fifty cents, and said justices, at the rate of two dollars a day each, while employed in the said business; and the said commissioners, at the rate of two dollars a day each; and the said surveyor, at the rate of four dollars a day; and the chain-bearers and witnesses, at the rate of one dollar a day each.

In case of vacancy.

Sec. 10. *And be further it enacted*, That in all cases of the death, resignation, neglect, or refusal of any of the commissioners to be appointed, by virtue of this act, before the trust, duties, and services, hereby required of them, shall be completed, that then the said judge, or judges, or justices, or in case of his or their death, resignation, or removal, any other of the judges, or justices, shall by writing, under his or their hands and seals, appoint another commissioner, or commissioners, who shall be vested with the like powers and authority, as if he or they had been originally appointed.

Expenses, by whom and how paid.

Sec. 11. *And be it further enacted*, That after the said judge, or judges, or justices, shall have ascertained the whole expense of such partition, he or they shall divide the same among the several parts or shares: which shall be paid by the persons to whom such shares were allotted, their heirs, or assigns, within four weeks after the same shall be ascertained: or, in default of payment of such expense, the said judge, or judges, or justices, are hereby authorized, where no other property is to be found, to direct a sale to be made by the commissioners, of so much of those parts or shares, deficient in paying the expenses, as will be sufficient to pay their respective proportion thereof; together with the expenses accruing on such sale. And the said judge, or judges, or justices, shall direct the same to be sold by the said commissioners, at public auction, to the highest bidder, whereof four weeks notice shall be previously given, in one of the said newspapers, and at three of the most public places in the county in which the land lies. And the said commissioners' deed to the purchaser shall pass as good a title for the separate enjoyment of the same, as if all the arrears and claimants of shares, of the entire tract, divided, had joined therein.

Nothing herein to defeat the claim of another.

Sec. 12. *And be it further enacted*, That nothing in this act contained, shall be so construed as to tend to injure, prejudice, defeat, or destroy the estate, right or title of any person, or persons claiming such tract or tracts of land, or any part thereof, or any thing therein by title, under any other person or persons; or by title, paramount, or superior to the title of such coparceners, joint tenants, or tenants in common; among whom partition is to be made.

CHAPTER III.

[The following Act is from the English Statutes of 29 Charles II. Chap. 3.]

An Act to prevent Frauds and Perjuries.—*Passed November* 18, 1803.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That no action shall be brought, whereby to charge any executor or administrator, upon any special promise, to answer any debt or damage, out of his own estate; or whereby to charge the defendant, upon any special promise, to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract for the sale of lands, tenements, or hereditaments, or the making any lease thereof, for a larger term than one year; or upon any agreement, which is not to be performed within the space of one year from the making thereof; unless the promise or agreement, upon which such action shall be brought, or some memorandum, or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person, by him thereunto lawfully authorized.

Fraudulent conveyances, bonds. &c. void, except, &c.

SEC. 2. *And be it further enacted*, That every gift, grant, or conveyance of lands, tenements, or hereditaments, goods or chattels, or of any rent-common, or profit, out of the same, by writing or otherwise; and every bond, suit, judgment, or execution, had, or made and contrived of malice, fraud, covin, collusion or guile, to the intent or purpose to delay, hinder, or defraud creditors, of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures; or to defraud or to deceive those who shall purchase the same lands, tenements or hereditaments; or any rent, profit, or commodity out of them; shall be from henceforth deemed and taken only as against the person or persons, his, her, or their heirs, successors, executors, administrators, or assigns, and every of them, whose debts, suits, demands, estates, interests, by such guileful and covinous devices and practices as is aforesaid, shall or might be, in any wise disturbed, hindered, delayed, or defrauded, to be clearly and utterly void; any pretence, colour, feigned consideration, expressing of use, or any other matter, or thing to the contrary, notwithstanding. And moreover, if any conveyance be of goods or chattels, and be not on consideration deemed valuable in the law, it shall be taken to be fraudulent, within this act; unless the same be by will, duly proved and recorded; or by deed in writing, acknowledged or proved. If the same deed include lands, also in such manner as conveyances of lands are by law directed to be acknowledged or proved, or, if it be of goods and chattels only, then acknowledged or proved by one or more witnesses, in the superior court, or county court, wherein one of the parties lives; within twelve months after the execution thereof. Or, unless possession shall

In what cases conveyances of goods, &c. shall be void really, and *bona fide*, remain with the donee. And in like manner, where any loan of goods and chattels shall be pretended to have been made to any person, with whom, or those claiming under him, possession shall have remained by the space of three years, without demand made and pursued by due course of law, on the part of the pretended lender; or where any reservation or limitation shall be pretended to have been made, of a use or property, by way of condition, reversion, remainder, or otherwise, in goods and chattels, the possession whereof shall have remained in another as aforesaid; the same shall be taken as to the creditors and purchasers, of the persons aforesaid, so remaining in possession, to be fraudulent within this act: and that the absolute property is with the possession; unless such loan, reservation or limitation of use, or property, were declared by will or by deed, in writing, proved and recorded as aforesaid.

Not to extend to bona fide conveyances.

SEC. 3. *And be it further enacted*, That this act shall not extend to any estate or interests in any lands, goods, or chattels; or any rents common, or profit out of the same; which shall be upon good consideration, and *bona fide*, lawfully conveyed, or assured, to any person or persons, bodies politic, or corporate.

SEC. 4. *And be it further enacted*, That this act shall take effect and be in force from and after its passing.

NOTE.—Another Act relating to Fraudulent Conveyances, will be found under title "Executions," Chapter 6.

CHAPTER IV.

An Act to amend an Act entitled "An Act respecting Conveyances."—*Passed December 7, 1811.*

Subsequent bona fide purchaseers or mortgagees.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That from and after the passing of this act, any deed or conveyance of lands, tenements, or hereditaments, lying and being in this territory, which shall be made and executed after the passing of this act, shall be void and of no effect, against a subsequent *bona fide* purchaser or mortgagee for a valuable consideration, not having notice thereof, unless such deed or conveyance shall be acknowledged or proven and certified; as by the act to which this is an amendment, is directed and be lodged (within three calender months,) after the time of signing, sealing and delivering the same, with the clerk of the county court of the county in which the said lands, tenements, or hereditaments are situated, to be recorded by the said clerk: *Provided nevertheless*, that such deed or conveyance shall, as between the parties and their heirs, be valid and operative.

SEC. 2. *And be it further enacted*, That the seventh section of the act to which this is an amendment, be, and the same is hereby repealed.

CHAPTER V.

An Act to amend an Act respecting Conveyances.—*Passed December 22, 1812.*

Deeds to be recorded.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That any deed or conveyance of real estate may be admitted to record, if acknowledged by the maker or makers thereof, or be proved by any of the subscribing witnesses thereto, before any one of the superior judges or justices of the quorum, of any county court in this territory; and the following shall be the form of the certificate of acknowledgment, or probate of all deeds, to wit: "Mississippi Territory,—ss.

Form of the certificate of acknowledgment.

County, personally appeared before me esquire, a judge of the said territory, or justice of the quorum of said county (as the case may be) the above named A. B. who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, to the aforesaid C. D.

Given under my hand and seal, this day of ;" and in case of probate, by a subscribing witness, thus: (as above to the end of the description of the judge or justice) the above named E F. one of the subscribing witnesses to the foregoing deed, who being first duly sworn, deposeth and saith, that he saw the above named A. B. whose name is subscribed thereto, sign, seal, and deliver the same to the said C. D. that he, this deponent, subscribed his name as a witness thereto, in the presence of the said A B. and that he saw the other subscribing witness (or witnesses, naming them as the case may be) sign the same, in the presence of the said A. B. and in the presence of each other, on the day and year therein named. Given under my hand and seal, &c.

Clerk to give a certificate.

SEC. 2. *And be it further enacted,* That any deed of real estate lying in this territory, made or executed by any person or persons residing without the limits of the same, may be admitted to record in the clerk's office, of the county where such estate may lie, if acknowledged or proved in the manner required by this act, before any judge or justice of any court, or notary public, of the state or territory, in which the maker of such deed may be: *Provided,* That the certificate of such acknowledgment or probate, shall be accompanied by a certificate of the clerk of the court, to which such judge or justice may belong, that such judge or justice is of such court, and that due faith and credit is to be given to any act done by them, when acting in their official character, and the seal of office, if any there be, shall be affixed to such certificate.

Certificate to be valid.

SEC. 3. *And be it further enacted,* That any certificate of probate or acknowledgment of any such deed, shall be good and effectual, if it contain the substance, whether it be in the form or not, of that set forth in the first section of this act.

Part of the 7th section repealed.

SEC. 4. *And be it further enacted*, That so much of the seventh section of an act, entitled "An Act respecting Conveyances," as allows twelve calendar months, after the making of the deeds therein mentioned, to deposit the same in the clerk's office, to be recorded, be, and the same is hereby repealed, and that such deeds shall hereafter be so deposited for record, within three calendar months, with the same effect and consequences as is provided in the said recited act.

Fee simple.

SEC. 5. *And be it further enacted*, That every estate in land, which shall be hereafter granted, conveyed, or devised, although words heretofore necessary to transfer an estate of inheritance, be not added, shall be deemed a fee-simple, if a less estate be not limited by express words.

Section repealed.

SEC. 6. *And be it further enacted*, That the twenty-fourth section of the act, entitled "An Act respecting Conveyances," be, and the same is hereby repealed.

Children born after the decease of the parent to take the estate.

SEC. 7. *And be it further enacted*, That where an estate hath been, or shall be by any conveyance limited in remainder to the son, or daughter, or to the use of the son or daughter of any person to be begotten, such son or daughter, born after the decease of his or her father, shall take the estate in the same manner, as if he or she had been born in the lifetime of the father, although no estate shall have been conveyed to support the contingent remainder after his death.

Deeds to be binding.

SEC. 8. *And be it further enacted*, That in all cases by deed of bargain, and sale, or by deeds of lease, and release, or by covenant to stand seized to use, or by deed operating by way of covenant, to stand seized to use, the possession of the bargainor, releasor, or covenantor, shall be deemed heretofore to have been, and hereafter to be transferred to the bargainee, releasee, or person entitled to the use of the estate, or interest which such person hath, or shall have in the use, as perfectly as if such bargainee, releasee, or person entitled to the use, had been *enfeoffed* with livery of seizen of the land intended to be conveyed by the said deed or covenant.

Husband and wife to recover courtesy.

SEC. 9. *And be it further enacted*, That where any person to whose use, or in trust for whose benefit another is, or shall be seized of lands, tenements, or hereditaments, hath, or shall have such inheritance in the use, or trust as that if it had been a legal right, the husband, or wife of such person would thereof have been entitled to courtesy, or dower, such husband or wife shall have, and hold, and may by the remedy proper in similar cases, recover courtesy, or dower of such lands, tenements, or hereditaments.

Fee tail.

SEC. 10. *And be it further enacted*, That every estate in lands or slaves, which now is or shall hereafter be created an estate in fee-tail, shall from henceforth be an estate in fee-simple, and the same shall be discharged of the conditions annexed thereto by the common law, restraining alienations before the *donee* shall have issued, so that the donee, or person in whom the conditional fee is vested, or shall vest, shall have the same power over the said estates, as if they were pure, and absolute fees: *Provided*, That any person may make a conveyance, or demise of lands, to a succession of donees, then living, and the heir or heirs of the body of the remainder-man and default thereof, to the right heirs of the donor in fee-simple.

Feme covert.

SEC. 11. *And be it further enacted*, That it shall and may be lawful in such cases, where deeds have been recorded, and the *feme covert* hath not relinquished her right of dower in the same, for her to relinquish her right of the lands so deeded before any judge, or justice of the quorum of this territory, or any judge, or justice of any court, or notary public, of any other state, or territory, and such officer having previously examined her as required by law, shall certify the same under his hand, which certificate shall be recorded in the court, where the deed or deeds may have been recorded, which shall be deemed sufficient.

CHAPTER VI.

Extracts from an Act, passed December 24th, 1812, entitled, "An Act making further regulations in Judicial Proceedings."

Certificates to be valid.

SEC. 8. *And be it further enacted*, That all certificates issued in pursuance of any act of congress, by any of the boards of commissioners, register of a land office, or any other person duly authorized to issue such certificate upon any warrant, or order of survey, or to any donation or pre-emption claimants, for any lands in this territory, shall be taken and received as vesting a full, complete, and legal title in the person in whose favour the said certificate is granted, to the lands therein mentioned, and his, her, or their assigns so far as to enable the holder of such certificate to maintain any action thereon, and the same shall be received in evidence as such in any court of this territory.

CHAPTER VII.

An Act authorizing Executors and Administrators to make Titles to Real Estate, sold by their Testator, or Intestate.—*Passed December 24, 1812.*

Persons may petition the orphans' court for land titles.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That where any person owning lands or tenements, shall sell the same, and enter into bond or obligation to make titles thereto, and shall depart this life without having made titles, that then, and in that case, the person to whom such bond or obligation was given, his executors or administrators may petition the orphans' court of the county where probate of the will of such deceased person was taken, or letters of administration granted, to compel the executors or administrators, to make titles agreeable to the bond or obligation given by the decedant, and it shall be the duty of such court, to cause their clerk or register to cause notice of such petition to be published in some newspaper in this territory, once a month for at least three months, when the court may, if they find that the said contract was fairly made, order the executor or administrator to make titles as such, to the lands or tenements sold by their testator or intestate, and any executor or administrator refusing to comply with such order, may by such court be imprisoned for the contempt, until they will comply with the order of such court: *Provided*, that any person dissatisfied with the sentence or order of the court, on any petition as aforesaid, may take their appeal to the superior court, as in other testamentary cases.

Note.—An Act regulating Judicial Proceedings, in certain real and possessory actions, and for other purposes, passed December 13. 1816, which relates to improvements made by persons occupying lands, their titles to which shall appear defective, and compelling payment for the improvements in certain cases, before the successful party shall obtain possession, will be found under title "Judicial Proceedings."

CHAPTER VIII.

An Act to abolish the Right of Survivorship in all Cases.—*Passed February* 4, 1818.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That hereafter, when two or more persons hold an estate, real or personal, jointly, and one joint tenant dies before serverance, his interest in said joint estate shall not survive to the remaining joint tenant or joint tenants, but shall descend to, and be vested in the heirs or other legal representatives of such deceased joint tenant, in the same manner as if his interest had been severed and ascertained.

Right of survivorship in legal representatives.

CHAPTER IX.

An Act to authorize Deeds of Conveyance to be acknowledged, and Rights of Dower to be relinquished before Clerks of Courts.—*Passed November* 21, 1818.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That hereafter, the clerks of the several superior and county courts in this territory, may lawfully take and certify acknowledgments of deeds of conveyance of real estate, and relinquishments of dower, within their respective counties, in like manner and form as is now required by law, before judges of the superior court, and justices of the quorum.

Certify, &c.

Sec. 2. *And be it further enacted*, That for each and every certificate so made, the said clerks and justices of the quorum shall be allowed a fee of fifty cents, to be paid by the party at whose instance the same was made.

Fee.

CHAPTER X.

An Act to authorize Justices of the Peace to receive the due Acknowledgment and Probate of Deeds, and Relinquishment of Dower.—*Passed December* 17, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That hereafter, any two justices of the peace may take the acknowledgment or probate of deeds, and the relinquishment of the right of dower by *femes covert,* in the same manner, and under the same regulations, that judges, justices of the quorum, or clerks of the courts, are now authorized to take such acknowledgment, probate, or relinquishment: and the certificate of such justices of the peace, that such acknowledgment, probate, or relinquishment has been taken by them, shall be as available in law, and such deed shall be admitted to record thereon, in the same manner, and under the same regulations as if the acknowledgment, probate, or relinquishment of dower, had been made, and a certificate thereof given by a judge, justice of the quorum, or clerk of a court.

CHAPTER XI.

An Act to authorize the Judges of the Circuit Courts and Justices of the County Courts, to take the Acknowledgments of Deeds and Relinquishments of Dower.—*Passed December* 20, 1820.

Preamble.

Whereas doubts have arisen whether the law of the Alabama territory authorizing justices of the quorum to take the acknowledgments of deeds and relinquishments of dower, extends the right to the justices of the county courts.

Judges and justices of the county court authorized to take acknowledgments of the deeds, &c.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, judges of the circuit courts, and justices of the county courts respectively, may, and they are hereby authorized to take acknowledgments of deeds and relinquishments of dower, in the same manner that justices of the quorum were authorized to do, under the laws of the Alabama territory.

Acknowledgments heretofore made, legalized.

SEC. 2. *And be it further enacted,* That all acknowledgments of deeds and relinquishments of dower, which have been heretofore made before judges of the circuit courts, or justices of the county courts, respectively, are hereby made legalized, and made valid, to all intents and purposes whatever.

CHAPTER XII.

An Act to Legalize Registering certain Deeds or Conveyances of Land in this State.—*Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That any person or persons within this state, who have had deeds or conveyances of land executed to them, and have failed to have the same registered within the time prescribed by law, that it shall be lawful for the said delinquents, within twelve months after the passage of this act, to have the same registered in the manner the law prescribes; and a duly certified copy thereof shall be valid, and read in evidence in any court of law or equity in this state, any law to the contrary notwithstanding.

CHAPTER XIII.

An Act to regulate the Mode of Issuing Grants and Patents in this State.—*Passed December* 6, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That for the conveyance or transfer of the right of lands, town lots, or other real estate in fee simple, belonging to this state, to any person or persons, company, body politic, or corporation, a patent shall issue with the great seal of the state, signed by the governor, and attested by the secretary of state.

Evidence to authorize issuance of patent.

SEC. 2. *And be it further enacted,* That all purchasers of lands, town lots, or any real estate belonging to this state, their heirs, legal representatives, or assigns, may receive a patent for the same, upon his, her, or their producing to the secretary of state, a certificate or receipt signed by the treasurer of this state, that the said purchaser or purchasers, their heirs, legal representatives, or assigns, have satisfied or paid into the treasury of this state, the legal amount due for such land, town lot, or other real estate; and it shall be the duty of the governor forthwith to issue a patent to the said purchaser or purchasers, their heirs, legal representatives or assigns, upon the production of the certificate or receipt as aforesaid.

Patents to be recorded.

SEC. 3. *And be it further enacted,* That it shall be the duty of the secretary of state to record in a strong bound book, to be kept for that purpose, all grants and patents, of what nature or kind soever, issued by this state to any person or persons, company, body politic, or corporation.

Fee.

SEC. 4. *And be it further enacted,* That any person receiving a grant as aforesaid, shall pay therefor, upon the receipt thereof, to the secretary of state, the sum of seventy-five cents.

DIVORCE AND ALIMONY.—1803.

CHAPTER I.

An Act concerning Divorce and Alimony.—*Passed March* 10, 1803.

Superior courts authorized to divorce.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, and it is hereby enacted by the authority of the same,* That the supreme or superior court of this territory, having equity jurisdiction, shall, from and after the passing of this act, have jurisdiction of all causes of divorce by this act directed and allowed: *Provided* the parties be inhabitants of this territory.

Same process as in equity, except, &c.

SEC. 2. *And be it further enacted,* That the like process and course of practice and procedure shall be had and pursued in causes of divorce, as are usually had and pursued in other causes on the equity side of said court, except that the answer of defendants shall not be under oath.

Divorces a vinculo matrimonii in certain other cases.

SEC. 3. *And be it further enacted,* That divorces from the bond of matrimony, shall be decreed in cases where the parties are within the degrees prohibited by law, in cases where either party is naturally impotent, and in case of adultery in either of the parties, and also for wilful, continual, and obstinate desertion, for the term of five years; but the decree or sentence of divorce, in such cases, shall not render illegitimate the issue born under such marriage.

The same in certain other cases.

SEC. 4. *And be it further enacted,* That divorces from the bond of matrimony shall also be decreed, where either of the parties had another wife or husband, living at the time of such second or other marriage, and that all marriages, where either of the parties shall have a former wife or husband living at the time of such marriage, shall be invalid from the beginning, and absolutely void.

Collusive adultery insufficient.

SEC. 5. *And be it further enacted,* That if it appears to the court, that the adultery complained of, is occasioned by collusion of the parties, and done with intention to procure a divorce, then no divorce shall be decreed.

Divorce à mensa et toro, for cruelty, unless collusive.

SEC. 6. *And be it further enacted,* That divorce from bed and board shall be decreed for extreme cruelty, in either of the parties; but if it appear, that the cruelty complained of is occasioned by the collusion of the parties, and done with intent to obtain such divorce, then no divorce shall be decreed.

Alimony and provision for children.

SEC. 7. *And be it further enacted,* That when a divorce shall be decreed on account of the parties being within the prohibited degrees, or for the cause of adultery, or extreme cruelty, the court shall, and may in every such case, take such order touching the care and maintenance of the children, of that marriage, and also touching the maintenance and alimony of the wife, or any allowance to be made to her, and if any, the security to be given for the same, as from the circumstances of the parties, and nature of the case, may be fit, equitable, and just.

Certain persons cohabiting after divorce, to be punished for incest.

SEC. 8. *And be it further enacted*, That if any persons, who shall be divorced on account of their being within the prohibited degrees, shall after such divorce cohabit together, such persons so offending shall be liable to all the pains and penalties provided by the then existing laws against incest.

Any persons doing the like to be punished as for adultery.

SEC. 9. *And be it further enacted*, That if any persons cohabit together after the divorce, for the cause of prior marriage, or adultery, such persons so offending shall be liable to all the pains and penalties provided by the laws then existing against adultery.

Proceedings against an absconding party.

SEC. 10. *And be it further enacted*, That in all cases of divorce, brought, or to be brought into any of the courts of this territory, if the party against whom complaint is, or shall be made, hath removed, or shall (after the cause of complaint hath arisen,) remove without the jurisdiction of the said court, so that the process thereof cannot be served, or if served the party cannot be compelled to appear, or answer, or plead; it shall and may be lawful for the judges of the said court, on bill filed, and due proof that the defendant hath removed as aforesaid, to order a hearing, on the fact charged in said bill, and thereupon to pass a decree in the same manner, as if the defendant had appeared and were present in court: *provided nevertheless*, that a copy of said order for hearing be published in one of the public newspapers of this territory, for the space of three months at least before the day appointed for the said hearing.*

CHAPTER II.

An Act supplemental to an Act entitled " An Act concerning Divorce and Alimony." Passed March 10, 1803.—*Passed December* 5, 1809.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That from and after the passing of this act, the supreme or superior court of the Mississippi territory having equity jurisdiction, shall have cognizance of all cases of divorce by the before recited act directed and allowed: *Provided*, the parties, or the one applying for a divorce be *bona fide* a resident of the Mississippi territory, at the time of making such application, and shall have been for at least one year immediately preceding the filing his or her bill for a divorce.

SEC. 2. *And be it further enacted*, That it shall be sufficient that the party making application for a divorce, pursue the usual method directed in the second section of the before recited act, or in case the adverse party be a nonresident of the

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* This act has not been repealed: but the provisions contained in it are considerably modified in the act of 1820 which follows, in Chapter 5.

Mississippi territory, he or she so applying, may at his or her option pursue that mode, or may have a notice issuing from said court in the nature of a summons, served upon the absent defendant, and proof of such notice having been served being made to the court, they shall take the same order thereupon as if notice had been given in the usual way.

SEC. 3. *And be it further enacted*, That all acts and parts of acts coming within the purview of this act, be, and the same are hereby repealed.

CHAPTER III.

A List of Cases in which Laws granting Divorces were passed during the existence of the Territorial Government of the Alabama Territory.

February 4, 1818. Elizabeth Bennett from James Bennett.

February 13, 1818. Lucretia Dearmond from James Dearmond.

November 17, 1818. Mary P. Moore from Gabriel Moore, the said Mary to be afterward called Mary P. Caller.

November 20, 1818. Gray Syms from Catherine Syms.

November 21, 1818. John Barron from Clarissa Barron.

November 17, 1818. Maria Fuller from William Fuller.

An Act passed November 20, 1818, has additional provisions, as follows:

Henry's divorce.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That William Henry be and he is hereby divorced from the bonds of matrimony heretofore subsisting between him and Ann Henry his wife.

Legitimatized.

SEC. 2. *And be it further enacted*, That the marriage of the said William Henry with Amelia Bradley previous to the granting of this divorce, be, and the same is hereby declared to be good and valid in law, and that George Gaines, Caroline Matilda, Cornelia, Julia Brunette, and William Jackson, the issue born of said marriage, be, and the same are hereby declared to be legitimate.

Everitt's divorce.

SEC. 3. *And be it further enacted*, That John F. Everitt be, and he is hereby divorced from the bonds of matrimony heretofore subsisting between him and Sarah Ann L. Everitt, his wife.

Children legitimatized.

SEC. 4. *And be it further enacted*, That the marriage of the said John F. Everitt and Sarah Hand, previous to the passage of this act, be, and the same is hereby declared to be good and valid in law, and Mary Elizabeth, and Enoch, the issue of said marriage, be, and the same are hereby declared to be legitimate.

CHAPTER IV.

CONSTITUTION.

ARTICLE [illegible]

SEC. 13. Divorces from the bonds of matrimony shall not be granted, but in cases provided for by law, by suit in Chancery, and no decree for such divorce shall have effect, until the same shall be sanctioned by two-thirds of both houses of the General Assembly.

CHAPTER V.

An Act concerning Divorce.—*Passed December* 21, 1820.

Circuit courts vested with power of divorce.

Causes of divorcements.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the several circuit courts of this state shall be, and they are hereby invested with power and jurisdiction to decree divorces in the manner hereinafter mentioned, and in the following cases, that is to say: In favour of the husband where his wife shall have been taken in adultery, or voluntarily left his bed and board, for the space of two years, with intention of abandonment, or where she shall have abandoned him and lived in adultery with another man, or other men. And in favour of the wife, where her husband shall have left her for the space of two years, with intention of abandonment, or where he shall have abandoned her and lived in adultery with another woman, or with other women, or where his treatment to her is so cruel, barbarous, and inhuman, as actually to endanger her life.

Courts of chancery to grant divorces.

SEC. 2. *And be it further enacted,* That in the cases before mentioned, the party desirous of obtaining a divorce, may apply to the circuit court of that county, in which he or she resides, by a bill in chancery, stating the grounds of the application, on which such proceedings shall be had as are usual in other suits in chancery.

Notice to nonresident defendants.

SEC. 3. *And be it further enacted,* That if the court shall be satisfied that the defendant is not a resident of this state, order of publication shall be made as in other cases of nonresident defendants, except that the order shall succinctly state the object of the bill.

Defendant may answer without oath. Bill not confessed by want of answer.

SEC. 4. *And be it further enacted,* That the defendant may appear and answer the complainant's bill without oath, denying the allegations thereof, or if the defendant shall fail to appear and answer, the cause may be set down for trial, but the bill shall not be taken for confessed, but proof shall be required to support the allegations thereof, as in cases where they are decided by answer.

Divorce not to release the offending

SEC. 5. *And be it further enacted,* That the court may pronounce a decree for a divorce according to the provisions of party from indictment.

this act, but such decree shall not operate so as to release the offending party, who shall remain nevertheless subject to all the pains and penalties which the law prescribes against a marriage where a former wife or husband is living.

Alimony.

SEC. 6. *And be it further enacted*, That the court pronouncing the decree of divorce, s[illegible]lso decree and order a division of the estate of the parties, [illegible]uch way as to them shall seem just and right, having due regard to the rights of each party and their children, if any: *Provided, however*, that nothing herein contained, shall be construed to compel either party to divest him or herself of the title to real estate.

Temp[illegible]y orders.

SEC. 7. *And be it further enacted*, That pending a suit for a divorce, the court may make such temporary orders respecting the property and parties as they shall deem equitable.

Copy of proceedings to be delivered to speaker of house of representatives.

SEC. 8. *And be it further enacted*, That when a decree shall be ren[illegible]red for a divorce, it shall be the duty of such court to make out, at the request of the party in whose favour the decree is rendered, a complete copy of the record, and evidence in said suit, which shall be certified by said clerk, and by him sealed up and directed to the Speaker of the House of Representatives of the State of Alabama, and endorsed thereon that it is a decree for a divorce; which decree and proceedings shall be delivered to said speaker by the party, or his or her attorney, applying for the same within and during the ensuing session of the Legislature.

Speaker's duty.

SEC. 9. *And be it further enacted*, That it shall be the duty of the Speaker of the House of Representatives, in the presence of the members of the house, to open such record, and cause the same to be read and proceeded on according to the Constitution of the State of Alabama.

CHAPTER VI.

An Act, confirming a Decree of the Circuit Court of Madison County, exercising Chancery Jurisdiction, pronounced in September term, 1820, divorcing Harriet Dillard from her husband Nicholas Dillard.—*Passed November* 20, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the bonds of matrimony heretofore solemnized and subsisting between said Nicholas Dillard and Harriet Dillard be dissolved, and that the said Harriet be henceforth divorced from the said Nicholas.

CHAPTER VII.

An Act to divorce Sarah M. Bracken from her husband James A. Bracken, in pursuance of the Decree of the Circuit Court of Franklin County, exercising Chancery Jurisdiction.—*Passed December* 17, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the bonds of matrimony heretofore existing between

Sarah M. Bracken and James A. Bracken be, and the same is hereby dissolved, and the said Sarah M. Bracken shall be entitled to all the rights and privileges of a *feme sole*, in pursuance of the decree of the circuit court of Franklin county, exercising chancery jurisdiction.

CHAPTER VIII.

An Act Divorcing certain Persons therein named.—*Passed November 29*, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That, in conformity with the decision and decree of the circuit court of Conecuh county, exercising chancery jurisdiction, pronounced and entered at September term, one thousand eight hundred and twenty-one, the bonds of matrimony heretofore solemnized and subsisting between William Bagby and his wife Elizabeth Bagby, be, and the same are hereby annulled and made void; and that the said William Bagby be, henceforth, divorced from the said Elizabeth Bagby.

W. Bagby divorced from his wife Eliza.

SEC. 2. *And be it further enacted*, That, in conformity with the decision and decree of the circuit court of Madison county, exercising chancery jurisdiction, pronounced and entered at September term, one thousand eight hundred and twenty-one, the bonds of matrimony heretofore solemnized and subsisting beween Nancy Clift and her husband Jesse Clift, be, and the same are hereby annulled and made void; and that the said Nancy Clift be, henceforth, divorced from the said Jesse Clift.

Nancy Clift divorced from her husband Jesse.

SEC. 3. *And be it further enacted*, That, in conformity with the decision and decree of the circuit court of Morgan county, exercising chancery jurisdiction, pronounced and entered at October term, one thousand eight hundred and twenty-one, dissolving the bonds of matrimony heretofore solemnized and subsisting between Elizabeth Caley and her hushand Henry Edward Caley, be, and the same are hereby annulled and made void; and that the said Elizabeth Caley be, henceforth, divorced from the said Henry Edward Caley.

Elizabeth Caley divorced from her husband Henry E. Caley.

SEC. 4. *And be it further enacted*, That in conformity with the decision and decree of the circuit court of Dallas county, exercising chancery jurisdiction, pronounced and entered at August term, one thousand eight hundred and twenty-one, dissolving the bonds of matrimony, heretofore solemnized and subsisting between John B. Lorez, and his wife Jane Lorez, be, and the same are hereby annulled and made void; and that the said John B. Lorez be, henceforth, divorced from the said Jane Lorez.

J. B. Lorez divorced from his wife Jane.

SEC. 5. *And be it further enacted*, That in conformity with the decision and decree of the circuit court of St. Clair county, exercising chancery jurisdiction, pronounced and entered at the regular term held in and for the county aforesaid, on the second Monday after the fourth Monday in September, one thousand eight hundred and twenty, the bonds of matrimony

Polydore Naylor divorced from his wife Elizabeth.

heretofore solemnized and subsisting between Polydore Naylor and his wife Elizabeth Naylor, be, and the same are hereby annulled and made void; and that the said Polydore Naylor be henceforth, divorced from the said Elizabeth Naylor.

CHAPTER IX.

An Act Divorcing certain Persons therein named.—*Passed January* 1, 1823.

[This Act divorces Polly Ryan from James Ryan, and Isaac Edwards from Rachael Edwards.]

CHAPTER X.

An Act Divorcing Robert Bransford from his wife Jane Bransford.—*Passed December* 10, 1822.

CHAPTER XI.

An Act Divorcing Nathan Briley from his wife Elizabeth Briley.—*Passed December* 12, 1822.

DOWER.—1812.

NOTE.—The Ordinance of the Congress of the United States, passed in 1787, and confirmed by the congress under the present federal constitution, in 1789, when alluding to dower, uses the following words, viz.—" Saving in all cases to the widow of the intestate, her third part of the real estate for life, and one third part of the personal estate: and this law, relative to descents and dower, shall remain in full force until altered by the legislature of the district." The act concerning wills, when providing for the distribution of intestates' estates, saves to the widow her dower; but in case of insolvency, deprives her of her share of the personal estate.

See Title " Wills," Chapter 2, Sections 11, 16, and 17. See, also, Title 25, " Executors," Chapter 1, and Section 27.

The mode by which a woman may relinquish her right of dower, will be found under Title 18, " Deeds and Conveyances," Chapter 1, Sections 3 and 6; and Chapter 5, Section 9.

CHAPTER I.

An Act concerning Dower.—*Passed December* 22, 1812.

Widow may signify her dissent to a will.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That when any person shall die intestate, or shall make his last will and testament, and not therein make any express provision for his wife, by giving and devising unto her such part or parcel of his real and personal estate, as shall be fully satisfactory to her, such widow may signify her dissent thereto in the superior or county court in the county wherein she resides, at any time within one year after the probate of such will, and then, and in that case she shall be entitled to dower, in the following manner, to wit: one third part of all the lands, tenements, and hereditaments of which her husband died seized, and possessed of, or had before conveyed, whereof said widow had not relinquished her right of dower, as heretofore provided for by law, which third part shall be and inure to her proper use, benefit, and behoof, in and during the term of her natural life, in which said third part shall be comprehended, the dwelling-house in which her husband shall have been accustomed most generally to dwell next before his death, together with the offices, out-houses, buildings, and other improvements thereunto belonging, or appertaining: *Provided*, That if it should appear to the judges or justices of the court to whom application is made, that the whole of the said dwelling-house, out-houses, buildings, and other improvements thereunto appertaining, cannot be applied to the use of the widow, without manifest injustice to the children, or other heirs, then, and in that case, such widow shall be entitled to such part only as the court may deem reasonable and just.

Widow's dower.

SEC. 2. *And be it further enacted*, That when a husband dies intestate, or shall make his last will and testament, and not make provision therein for his wife, as expressed in the first section of this act, she shall be entitled to share in the personal estate, in the following manner, to wit: if there be no children, or if there be but one child, in that case, she shall be entitled, out of the residue left after paying the debts of the deceased, to one half; but if there is more than one child, in that case, she shall be entitled to a child's part, in fee simple.

Widow to file her petition.

SEC. 3. *And be it further enacted*, That it shall be lawful, after the passing of this act, for any widow claiming dower, to file her petition in the superior or county court, in the county where her husband shall have usually dwelt, next before his death, setting forth the nature of her claim, and particularly specifying the lands, tenements, and hereditaments, of which she claims dower, and praying that her dower may be allotted to her, whereupon the said court shall issue their writ to the sheriff, commanding him to summon five discreet freeholders as commissioners, connected with the parties neither by consanguinity or affinity, and entirely disinterested, who upon oath, which oath the sheriff is hereby authorized to administer, shall allot, and set off by metes and bounds to the said widow, one third part according to quantity and quality of all the lands, tenements, and hereditaments in said county, and shall put her in possession of the same, which possession shall vest in her an estate for her natural life, and where she has claim to dower to lands lying in different counties, she may proceed in the superior county courts of the county where such land may lay, and make recovery in manner as is hereby directed, and the sheriff and commissioners shall also at the same time allot and set off to such widow, her portion of the personal estate of which her husband died possessed; and to which, by this law she shall be entitled, which part or portion shall be and inure to such widow, her heirs, executors, administrators, and assigns for ever.

Portion allotted.

Proceedings to be summary.

SEC. 4. *And be it further enacted*, That the proceedings upon such petitions for dower shall be in a summary way, and the court shall at their first term when such petition is filed, proceed to hear and determine as to them shall seem just and right: *Provided*, That the party petitioning for dower shall give ten days previous notice to the executors or administrators, by serving them with a copy of said petition: and where there are no executors or administrators, or where they do not reside in the county of the residence of such widow, or where the widow shall be the executrix or administratrix, then she shall give the said notice by advertisement in one of the newspapers published in the territory, nearest to the residence of such widow, to be published four times in succession.

To retain possession.

SEC. 5. *And be it further enacted*, That it shall be lawful for the widow to retain the full possession of the dwelling-house, in which her husband most usually dwelt, next before his death, together with the out-houses, offices, or improvements and plantation thereunto belonging, free from molestation and rent, until she shall have her dower assigned her.

Acts repealed.

SEC. 6. *And be it further enacted*, That all acts, and parts of acts, coming within the meaning of this act, be, and the same are hereby repealed.

CHAPTER II.

Extracts from An Act to authorize Executors and Administrators to sell Property of a Testator or Intestate, to complete payment for Lands purchased of the United States.—*Passed December* 12, 1816.

NOTE.—This Act is inserted under Title 25, "Executors." Chapter 8.

SEC. 3. *And be it further enacted*, That whenever any person shall die leaving a widow not satisfactorily provided for, according to the act of the general assembly passed on the 22d day of December, 1812, any land the title to which shall be secured in conformity to the provisions of this act, shall be subject to the dower of the said widow, in the same manner as if the title had been complete at the time of the death of her husband.

NOTE.—As to the statute's construction of titles by certificate of commissioners, See Title "Deeds and Conveyances," Chapter 6.

DUELLING.—1807.

Note.—This title might without any impropriety have been introduced under the head of "Crimes and Misdemeanors;" but inasmuch as there is a distinct system of laws with relation to this particular offence, it was deemed proper to place the laws relating to it under a separate title.

CHAPTER I.

An Act to prevent the evil Practice of Duelling.—*Passed November* 11, 1804.

Note.—This act was originally passed November 11th, 1803. It was incorporated *verbatim* in the Digest of 1807, with other laws respecting crimes. Its original title is now restored.

Preamble.

Whereas, from a false sense of honour, the inhuman, injurious, and detestable practice of duelling, has been too often and unhappily resorted to as a mode of adjusting or settling differences of small magnitude between individuals: *And whereas* this barbarous and savage conduct has of late obtained a great degree of prevalence, to the destruction of the lives of some valuable members of society, and involving the feelings of others, who from principle, and respect for the laws of their country, will not engage in this pernicious practice: *Be it therefore enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, and it is hereby enacted by the authority of the same:* That from and after the passing of this act, if any person or persons shall deliver, offer, or send any challenge in writing, verbally, or otherwise, to fight a duel, or shall accept such challenge, or shall fight a duel, and neither of the parties be killed, or shall be the bearer of such challenge, knowing the same to be such, the person or persons so offending, their aiders, or abettors, and each of them, shall on conviction thereof, be fined in the sum of one thousand dollars, and be imprisoned twelve calendar months, and be rendered incapable of holding any office of honour, profit, or trust under the government of this territory, for and during the term of five years from the time of such conviction.

Penalty for challenging.

Sec. 2. *And be it further enacted*, That if any person or persons residing or being in this territory, shall promote, concert, plan, or in any manner encourage the fighting of a duel between persons residing or being in this territory, whether the same duel be fought or not within this territory or elsewhere, such person or persons shall be subject tothe pains and penalties prescribed in the preceding section of this act.

Abettors liable to similar punishment.

Sec. 3. *And be it further enacted*, That if any person residing or being in this territory, do hereafter actually fight a duel, and either of the combatants be killed; the survivor, with such other person or persons who may have aided or assisted in the said duel, shall be deemed guilty of wilful murder, and on conviction thereof, shall suffer death.

Killing in a duel, wilful murder, and punishable with death.

Sec. 4. *And whereas* persons guilty of the crimes specified in the foregoing section escape punishment through want of sufficient testimony, occasioned by the secret combinations of the parties concerned: *Be it therefore further enacted,* when other evidence cannot be had of offences committed against this act, it shall and may be lawful for any justice of the peace, upon his own knowledge, or strong suspicion of such offences, or on credible information thereof, to him given on oath or otherwise, to issue a summons, or at his discretion a warrant, in the nature of a *capias* against any person or persons suspected to be concerned in such offences, which summons or warrant shall be returnable before one or more justices of the peace, who are hereby empowered, if necessary, to issue interrogatories in the premises to such person or persons, and to compel them to answer the same fully upon oath; and in case of their refusal, to cause them to be confined until they shall comply: *Provided,* that the person or persons so answering fully and satisfactorily, shall be wholly and entirely released and discharged from all manner of punishment for such offence or offences as he or they may be implicated in, by his or their answers as aforesaid; and the justices before whom such testimony is delivered, shall take recognizance or recognizances of such person or persons, binding him or them to appear at the succeeding superior court for the district or county in which the offender or offenders shall reside as in other cases.

Evidence how obtained.

Proviso.

Duty of justices and attorney-general.

Penalty for neglect.

SEC. 5. *And be it further enacted,* That each and every justice of the peace and attorney-general in this territory, is hereby enjoined to carry this act into strict execution, and prosecute all offenders within the meaning thereof. And if any justice of the peace or attorney-general, having knowledge or information of any offence committed against this act, shall fail to perform the several duties required of them respectively, such neglect of duty is hereby declared to be a misdemeanor, and for which such justice or attorney-general shall be removed from office, and be rendered incapable of holding any office of honour, trust, or profit under the government of this territory, for and during the term of two years thereafter.

Fines, how appropriated.

SEC. 6. *And be it further enacted,* That all fines and forfeitures which shall be incurred under this act, shall be collected by the sheriff of the particular county where such offender or offenders reside, and paid by him into the territorial treasury.

SEC. 7. *And be it further enacted,* That all acts and parts of acts coming within the purview and meaning of this act, shall be, and the same are hereby repealed.

CHAPTER II.

Extract from the Constitution of the State of Alabama, Article 6.

SEC. 3. The general assembly shall have power to pass such penal laws to suppress the evil practice of duelling, extending to disqualification from office, or the tenure thereof, as they may deem expedient.

CHAPTER III.

An Act to Suppress Duelling.—*Passed December 17, 1819.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the first day of April next, no person residing within this state, or being within the limits thereof, shall fight a duel, nor shall any person send or give a challenge either in writing, verbally, or otherwise, to fight a duel.

When act takes effect.

SEC. 2. *And be it further enacted,* That if any judge of the circuit court, or justice of the county court, or justice of the peace, within this state, have just or probable grounds of suspicion that any person or persons are about to be engaged in a duel, they, or either of them, shall by this act have power, and be compelled to issue a warrant to any constable, sheriff, or in the absence of these officers, to any person who is not a qualified peace officer, to take the body or bodies of all whom he may suspect to be concerned, either as principals, seconds, counsellors, aiders, or abettors, and have them brought before him; and if, after such examination as the judge or justice may think proper, it should appear there are just grounds for believing that a duel is intended, it shall be the duty of such judge or justice to bind the parties suspected in a recognizance, in such sum as he may deem requisite, with sufficient securities, to appear at the next county or circuit court, as well as bind them to keep the peace until the rising of the court to which they are bound to appear.

Judges, justices, &c. required to apprehend persons about to fight a duel, and bind them over.

SEC. 3. *And be it further enacted,* That if any person or persons be engaged, either as principals or seconds, in fighting a duel; or in other words, fighting in single combat with any deadly weapons, the principals and seconds, and every person or persons directly or indirectly concerned therein, either in sending, giving, accepting, or conveying any such challenge, knowing or believing it to be such, their counsellors, aiders, or abettors, upon being thereof lawfully convicted, shall be imprisoned three months, and shall severally forfeit and pay a fine to be assessed by any court having jurisdiction, not exceeding two thousand dollars, the one half thereof to be appropriated to the use of the state, and the other half to the use of the informer, and shall stand committed until such fine is paid, and until he or they shall severally give ample security, to be approved by the court aforesaid, for his or their good behaviour, for any term of years not exceeding two, and he or they shall be for ever disqualified from being a member of either branch of the legislature, and from holding any office or appointment of profit, honour, or trust, either executive, civil, military, or otherwise, in or under the authority of this state: *Provided, however,* That in case any death shall happen in consequence of any duel or single combat with deadly weapons, this act shall not be so construed as to save the offenders, their aiders and abet-

Persons engaged in fighting a duel may be fined and imprisoned.

Disqualified from holding an office.

Proviso.

tors, from the pains and penalties of the laws provided for the punishment of wilful murder, and on conviction thereof shall suffer death.

All officers required to take an oath.

SEC. 4. *And be it further enacted*, That all members of the general assembly hereafter to be elected, and all officers and public functionaries hereafter elected or appointed under the authority of the constitution and laws of this state, shall, before they enter upon the discharge of the duties of their stations or offices, either civil, military, or otherwise, take and subscribe the following oath (in addition to the oath prescribed by the constitution,) before any judge of the circuit or county courts, or any justice of the peace, who shall deliver such oath to the clerk of the circuit court for safe keeping: "I, ——— ———, do solemnly swear, that I have neither directly nor indirectly given, accepted, or knowingly carried a challenge in writing or otherwise, to any person or persons, to fight in single combat or otherwise, with any deadly weapon, either in or out of this state, since I have been a citizen thereof, or aided or abetted the same, since the first day of January, eighteen hundred and twenty; and that I will neither directly nor indirectly give, accept, or knowingly carry a challenge in any manner whatsoever, to any person or persons, to fight in single combat or otherwise, with any deadly weapon, in or out of this state, or in any manner whatsoever aid or abet the same during the time for which I am elected, or during my continuance in office, or during my continuance in the discharge of any public function." And upon his or their refusing to take the oath aforesaid, his or their seat, if a member of the general assembly, or his or their office, or public function, or appointment, shall be vacated, and shall be filled in the same manner as if he or they had resigned.

Attorneys, &c. to take an oath.

SEC. 5. *And be it further enacted*, That each and every person who now is a practising attorney or counsellor at law, and each and every person who shall hereafter desire to practise as an attorney or counsellor at law, in any court in this state, in addition to the oath by law prescribed to be taken by them, shall take and subscribe the oath prescribed in the fourth section of this act; and upon his or their failing or refusing to take said oath, they shall not be permitted to practise as an attorney or counsellor at law, in any court in this state.

Judges to charge grand juries.

SEC. 6. *And be it further enacted*, That it shall be the duty of all judges of the circuit courts in this state, to give this act specially in charge to the grand jury, at the commencement of each of their respective sessions.

Grand jury empowered to send for persons.

SEC. 7. *And be it further enacted*, That the foreman of the grand jury, or any member thereof, in their retirement, shall have power, under the authority of the court then setting, to send for any person or persons, who, on oath, shall give the grand jury such information as they may possess, relating to, or touching the violation of this law, and it shall be the duty of the grand jury to make presentments to the court of all such as may be violators; who shall be tried and dealt with as the existing laws may direct.

SEC. 8. *And be it further enacted*, That if any justice or other officer, bound to preserve the public peace, shall have knowledge of an intention to fight with any deadly weapons, given or received, and not use or exert his official authority to arrest the parties, and prevent the duel, such justice or other officer shall, for such neglect of duty, be indicted, and on conviction be dismissed from office. Justices, &c. liable to indictment, &c.

SEC. 9. *And be it further enacted*, That if any person or persons shall, in any newspaper or handbills, written or printed, publish or proclaim any other person or persons as a coward, or use any opprobrious or abusive language for not accepting a challenge, or fighting a duel; such person or persons so offending, shall, on conviction, be sentenced to pay a fine not exceeding five hundred dollars, as the court may order and direct. No person allowed to publish another as a coward.

SEC. 10. *And be it further enacted*, That the publisher or printer of any newspaper, handbill, or other publication, shall, in all publications under the last-mentioned section, be summoned as a witness, and be accepted by the court as a witness, against the writer or writers of such publication or handbill, and if the said printer or printers, when summoned before the court, shall refuse to give up the writer's name or names, the court shall consider him or them as guilty of flagrant contempt, and shall proceed to punish him or them in an exemplary manner. Printers' liability.

SEC. 11. *And be it further enacted*, That all laws in contravention of this act, be, and the same are hereby repealed. Repealing clause.

CHAPTER IV.

An Act supplementary to an Act, entitled "An Act to suppress Duelling," passed on the 17th December, 1819.—*Passed December* 6, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all members of the general assembly hereafter to be elected, and all officers and public functionaries hereafter elected or appointed, under the authority of the constitution and laws of this state, and counsellors and attorneys at law, shall, before they enter upon the discharge of the duties of their stations or offices, either civil, military, or otherwise, take and subscribe one of the following oaths, as the case may be, (in addition to the oath prescribed by the constitution) before any judge of the circuit or county courts, or any justice of the peace, who shall deliver such oath to the clerk of the circuit court for safe keeping:—"I, ——————, do solemnly swear (or affirm, as the case may be) that I have neither directly nor indirectly given, accepted, or knowingly carried a challenge, in writing or otherwise, to any person or persons (being a citizen of this state) to fight in single combat or otherwise, with any deadly weapon, either in or out of this state, or aided or abetted in the same, since the first day of January, one thousand eight hundred and twenty-one; and that I will neither directly nor indirectly give, accept, or knowingly carry a challenge, in Members of general assembly, officers of government, &c. to take an oath. Form of oath.

any manner whatsoever, to any person or persons, (being a citizen of this state) to fight in single combat or otherwise, with any deadly weapon, in or out of the state, or in any manner whatsoever aid or abet the same, during the time for which I am elected, or during my continuance in office, or during my continuance in the discharge of any public function."

Persons coming into this state to take an oath before entering on any public function.

SEC. 2. *And be it further enacted*, That any person or persons who has or have emigrated to this state since the first day of January, one thousand eight hundred and twenty one, or who may hereafter become a citizen of this state, shall, before he enters upon the discharge of any public function, take and subscribe the following oath: "I, ——— ———, do solemnly swear (or affirm, as the case may be,) that I have neither directly nor indirectly given, accepted, or knowingly carried a challenge in writing or otherwise, to any person or persons, (being a citizen or citizens of this state,) to fight in single combat or otherwise, with any deadly weapon, either in or out of this state, or aided or abetted in the same, since I have been a citizen thereof; and that I will neither directly nor indirectly give, accept, or knowingly carry a challenge, in any manner whatsoever, to any person or persons, (being a citizen or citizens of this state) to fight in single combat or otherwise, with any deadly weapon, in or out of the state, or in any manner whatsoever aid or abet the same, during the time for which I am elected, or during my continuance in office, or during my continuance in the discharge of any public function.

Form of oath.

SEC. 3. *And be it further enacted*, That all acts or parts of acts, coming within the meaning and purview of this act, be, and the same are hereby repealed.

ELECTIONS.—1812.

CHAPTER I.

An Act to amend and reduce into one, the several Acts regulating Elections.—*Passed December* 24, 1812.

[Section 1. Repealed.]

Sheriffs to give notice by advertisement.

SEC. 2. *And be it further enacted*, That the sheriff of each county in this territory, shall at least one month previous to the time appointed for holding each and every election for Representatives to the General Assembly, by advertisement, set up at the door of the court-house, and three other public places in his county, notify the inhabitants of his county, of the time and place of such election, and what offices are to be filled by such election.

The sheriff on the day of every such election, shall open the poll by twelve o'clock, and continue the same open until the hour of four in the afternoon of the next succeeding day; a suitable ballot-box shall be previously provided by the sheriff, to be paid for by the order of the county court, out of the county treasury.*

Coroner or justice to attend elections if no sheriff is present.

SEC. 3. *And be it further enacted*, That if at any time it shall happen, that there shall be no sheriff in any county, or in case he is unable to attend, or does not attend said elections, the coroner of such county, or if there be neither sheriff nor coroner, the justice of the peace who is oldest in commission is hereby authorized to perform the duties, which by this act, are enjoined upon the sheriff, and shall be considered as the returning officer of such county.

Elections to be held at court-houses.

SEC. 4. *And be it further enacted*, That the court-houses or places of holding the courts of the several counties in this territory, shall respectively be considered as the places of holding the said elections.

[Sections 5 and 6, obsolete.]

Inspectors.

SEC. 7. *And be it further enacted*, That the county courts respectively, at the term next preceding the day of any election, shall appoint three inspectors to superintend the election, and if it shall at any time happen that the county court shall fail to make such appointment, or if any person so appointed shall fail from any cause whatever to serve, the sheriff, with the advice of three justices of the peace, or if no justices shall be present, three respectable landholders shall appoint the said inspectors.

Clerks appointed.

SEC. 8. *And be it further enacted*, That the said inspectors shall appoint two persons to act as clerks at every election, whose duty it shall be to take down in writing, on separate lists, the name of every person voting.

To swear.

SEC. 9. *And be it further enacted*, That the clerks and inspectors of every such election, shall, before they proceed to business, swear (or affirm, as the case may be,) faithfully to perform their duties at such election justly and agreeably to law, according to the best of their skill and judgment.

Manner of procedure at elections.

SEC. 10. *And be it further enacted*, That every person who by law is entitled to vote for representatives to the General Assembly, and who shall choose to vote at any election, shall give to the sheriff, coroner, or justice, whoever may be the returning officer, in presence of the inspectors, a ticket, or scrawl of paper, rolled up, on which shall be written the name or names of the person or persons for whom he intends to vote; which ticket the said returning officer shall, in the presence of the inspectors, put into the ballot-box, and at the same time the clerks of the election shall take down on separate lists the name of every person voting; and when the election shall be finished, the returning officer and inspectors shall, in the presence of such of the candidates and electors as may choose to attend, open the box and number the ballots; at the same time reading aloud the names of the persons who shall appear on each ticket, which shall be taken down by the clerks in the presence of the said returning officer and inspectors, and if there should appear two tickets rolled up together, or if any ticket shall contain the names of more persons than such elector had a right to vote for, in either of these cases, such ticket shall not be numbered, but shall be adjudged void, and when the tickets shall be numbered, the persons having the greatest number of ballots shall be declared duly elected, unless in the counties herein particularly mentioned: but when two persons shall have an equal number of votes, the returning officer shall have the casting vote, but shall not vote in any other case whatsoever: and it shall be the duty of the said returning officer to certify in writing the names of the persons duly elected, which certificate shall be delivered to each representative so elected as aforesaid.

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* A part of the 2d Section is repealed in a subsequent act.

List of voters to be made out.

SEC. 11. *And be it further enacted*, That the returning officer, within ten days after any election, shall at the request of any person elected to serve in the General Assembly, or to Congress, or other person in his or their behalf, cause a true copy of the list of voters, and the number of votes for each candidate to be made out, certified, and signed by him, and delivered to the person requesting the same: and if any returning officer shall refuse so to do, or shall hold elections in any other manner than is by this act directed, or shall neglect or refuse to make returns of the elections held by him, he shall forfeit and pay the sum of one thousand dollars, to be recovered by action of debt in any court having jurisdiction thereof; one half to the use of the county in which such election shall have been held, and the other half to the use of the person who shall sue for the same.

Ballots numbered.

SEC. 12. *And be it further enacted*, That after the election shall be closed, it shall be the duty of the managers of said elections to number the ballots given for each candidate to congress, and cause the same to be taken down by the clerks thereof.

[Section 13, obsolete.]

To certify the number of votes.

SEC. 14. *And be it further enacted*, That the sheriffs of the several counties shall within ten days after such election, certify under his hand and seal, to the governor of the territory, the whole number of votes given in his county, to each candidate for congress, except the sheriff of Madison county, and the counties east of Pearl river, who shall be allowed thirty days; and it shall be the duty of the governor, after receiving the same, to compose the whole number of votes given to each candidate, and to proclaim, within ten days thereafter, the person having the greatest number of votes, to be duly elected.

Votes not be purchased by bribery.

SEC. 15. *And be it further enacted*, That any person elected to serve in the House of Representatives of this territory, who shall, either directly or indirectly, give, or agree to give to any elector, money, meat, drink, or other reward, in order to be elected, or for having been elected for any county, shall be expelled.

SEC. 16. *And be it further enacted*, That every person who shall be hereafter elected, and returned to serve as member of the House of Representatives, or appointed to serve as member of the Legislative Council of this territory, previous to his taking his seat, shall take and subscribe before the governor, an oath to support the constitution of the United States, and the following oath, or affirmation, viz.—"I, A. B. do solemnly swear, (or affirm) that I will faithfully execute and perform the duties of a member of the Legislative Council (or House of Representatives) for the county of , according to the best of my ability: So help me God." Oath of office.

SEC. 17. *And be it further enacted*, That if any vacancies shall happen in the House of Representatives, the governor of the territory shall issue writs of election to fill such vacancies, and such elections, holden by virtue of any writ from the governor, shall be conducted and regulated in the same manner as is by this act prescribed, as far as the general rules can be applied to the particular case; and in all such cases the sheriff of the county shall select any three justices of the peace, in case they can be procured, or in case of them, or any of them failing to attend, then any three respectable freeholders of the county, to act as inspectors thereof. Vacancies to be filled.

SEC. 18. *And be it further enacted*, That the inspectors of elections shall take care that such elections shall be conducted fairly, and agreeably to law: they shall endeavour to prevent all riotous and disorderly behaviour, and for this purpose shall have authority to commit to prison, for a period not exceeding two days, any person or persons, who shall by such riotous or disorderly behaviour, disturb the fair and legal course of such election; and they shall read or cause to be read aloud, at the court-house door, by the returning officer, this act, immediately after the polls are opened. Riots to be suppressed.

[Sections 19, 21, 22, 23, obsolete.]

[Section 20th, repealed in 1815.]

SEC. 24. *And be it further enacted*, That all acts, and parts of acts, concerning elections, and all other acts, and parts of acts, coming within the purview and meaning of this act, be, and the same are hereby repealed. Acts repealed.

CHAPTER II.

An Act to establish an additional place of holding Elections in Washington County.—*Passed December* 22, 1814.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That in addition to the place appointed, one other, to wit: at the land office, in the town of St. Stephens, or at such other place in said town, as may be fixed on by the county court of Washington county, which shall be holden at the same time, and under the superintendence of inspectors appointed in the same manner, as is prescribed by the act, entitled "An Act to amend and reduce into one the several Acts regulating Elections." Additional place of holding elections. Inspectors.

SEC. 2. *And be it further enacted*, That it shall be the duty of Their duty.

said inspectors to make out a fair statement of the votes given at said elections, and the number of votes for each candidate, and deliver the same within one day after the close of said elections to the sheriff of the said county of Washington.

Duty of sheriffs in cases of such election.

SEC. 3. *And be it further enacted*, That it shall be the duty of the said sheriff of Washington county to attend said election by himself or deputy, and perform all the duties required of him by the before recited act: and in case the said sheriff does not so attend, the coroner or a justice of the peace is authorized to perform the duties required of said sheriff, according to the provisions of the aforesaid act.

CHAPTER III.

An Act supplementary to an Act, entitled "An Act to amend and reduce into one the several Acts regulating Elections."—*Approved December* 27, 1815.

Respecting elections.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That whenever the inspectors of any election shall have reason to doubt the qualification of any person tendering a vote, they shall cause the ordinance and laws of congress relative to the qualification of voters in this territory to be read and explained to such applicant, on which they shall administer the following oath or affirmation, to wit: "I, A. B. do solemnly swear (or affirm, as the case may be) that I believe myself duly qualified to vote for a delegate to Congress, and members of the House of Representatives according to the Ordinance and Laws of Congress for the Government of this Territory; so help me God." And such applicant shall also state upon oath the particular qualification upon which he believes himself entitled to a vote; and if the qualification be a freehold, he shall also state that he holds the same *bona fide* and where the same *lies*. Which oath said inspectors are hereby authorized to administer; and any person who shall take said oath, knowing that he legally is not qualified to vote, shall be liable to all the pains and penalties of perjury.

Penalty for voting without being qualified, &c.

SEC. 2. *And be it further enacted*, That each and every person who shall vote at any election not being legally qualified; or who shall vote at more places than one at any election; or shall vote out of the county, or election district of his permanent residence, shall forfeit and pay the sum of two hundred dollars, to be recovered by action of debt in any court having competent jurisdiction; one moiety thereof to be applied to the use of the proper county, and the other to the use of the person suing for the same; *Provided*, that such action shall be commenced within six months after such offence shall have been committed.

CHAPTER IV.

An Act to establish Election Precincts in the County of Monroe.—*Passed November* 21, 1818.

4 Precincts.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That from and after the passing of this act, there shall be four election precincts in the county of Monroe.

Places.

No. 1. at Chocktaw Bluff; No. 2. at Fort Claiborne; No. 3. at the Little Standing Peach-Tree; No. 4. at the house of Mr. Hays, near Burnt Corn; to be held on the same day, and subject to the same rules and regulations, established by the act, entitled "An Act to amend and reduce into one, the several acts regulating Elections," passed the twenty-fourth day of December, one thousand eight hundred and twelve.

CHAPTER V.

An Act to make Election Precincts in the Counties therein named.—*Passed November* 21, 1818.

Places. Oath.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That hereafter there shall be three election precincts in the county of Marengo, viz.: one at the house of Tandy Walker, one at the house of Jesse Birdsong, and one at the house of William Hopkins, and the electors may meet at each of the above places on the days of every general election, and there vote as at other elections, and be subject to the same law, as other lawful voters are, and shall swear, if required, that they have not voted at another place of election.

3 Judges.

SEC. 2. *And be it further enacted,* That it shall be the duty of the county court to appoint three judges to superintend the election at each place according to law.

Sheriff superintend.

SEC. 3. *And be it further enacted,* That it shall be the duty of the sheriff, by himself or his deputies, to attend at each of the above election precincts, and there superintend the elections according to law, and on the first day after the elections are over, it shall be the duty of the sheriffs to meet at the place of holding general elections, and there compare the polls, and declare the elections.

Elections in Blount.

SEC. 4. *And be it further enacted,* That separate elections shall be opened and held, agreeably to law, in and for the county of Blount, at the house of John Gilbraith, and at the old store-house of Andrew Green; and it shall be the duty of the persons holding said elections to make returns thereof at the place of holding courts in said county, on the second day after said elections are closed.

Marion.

SEC. 5. *And be it further enacted,* That separate elections shall be opened and held, agreeably to law, in and for the county of Marion, at the house of Scott Montgomery, on Buttahatchee and at the house of William Leech at Looksaoppalala; and it shall be the duty of the persons holding said elections, to make return thereof on the second day after the same are closed, at the house of Jesse M'Kinney, at whose house the courts of said county shall be hereafter holden.

Tuskaloosa. SEC. 6. *And be it further enacted*, That separate elections shall be opened, and held agreeably to law, in and for the county of Tuskaloosa, at M'Cowan's Bluff, at the house of Robert Woods, and at the house of George Swindle, and it shall be the duty of the persons holding said elections, to make return thereof at the falls of Tuskaloosa, on the second day after the same are closed.

Dallas. SEC. 7. *And be it further enacted*, That there shall be held in the county of Dallas two additional elections—one at the house of George Tubbs, and one at the house of Joseph Britton, to be conducted and held at the same time, and in the same manner, as other separate elections are held and conducted in any county in this Territory.

Clarke. SEC. 8. *And be it further enacted*, That hereafter there shall be holden in and for the county of Clarke, four separate elections, at the following places, viz.: one at Jackson, one at Suggsville, one at Magoffin's store in said county, and one at Coffeeville, all which elections shall be holden for one day only; and that it shall be the duty of the managers of said elections to make their returns on the succeeding day, to the sheriff of said county, or his deputy, and that the said elections shall be under the same regulations and restrictions as other elections of the Alabama Territory.

CHAPTER VI.

Extracts from "An Act to establish certain Counties therein named."—*Passed December* 13, 1819.

Election precincts in, Clarke county. SEC. 26. *And be it further enacted*, That the said county of Clarke shall be divided into six election districts, to wit: one at the house of Duncan Campbell, one at the town of Coffeeville, one at the house of William Coats on Satilfa, one at Magoffin's store, one at the town of Jackson, and one at Suggsville.

Returns of election when made. SEC. 27. *And be it further enacted*, That the returns of election of the several districts, shall be made on the next day after the close of the election, to the house of William Coats, where the votes shall be compared.

Courts to be held at William Coats's. SEC. 28. *And be it further enacted*, That until the public buildings shall have been completed, the Circuit and Inferior courts shall be held at the house of William Coats.

Claiborne the seat of justice for Monroe. SEC. 29. *And be it further enacted*, That the permanent seat of justice in and for the county of Monroe, be, and the same is hereby fixed at the town of Claiborne in said county.

Elections in Butler county, where held. SEC. 30. *And be it further enacted*, That all elections by the people in the county of Butler, shall be held at Fort Dale, or the most convenient house thereto, and at the house of Jesse Womack; and all elections in the county of Henry, at the houses of William C. Watson, Captain S. Smith, and John Fannin; and in the county of Conecuh, in addition to the places heretofore designated, at the house of William Brewer; and all elections in the county of Jackson, at Sauta Cave, Honey-comb Spring, and Riley's, on Mud creek.

Sheriffs, &c. who fall into new counties, to continue in office.

SEC. 31. *And be it further enacted*, That all sheriffs and clerks of the circuit and inferior courts, who have been elected for the counties from which the counties established by this act have been taken, who may reside in the counties established by this act, shall continue to hold and exercise the duties of their respective offices within the same, during the period for which they have been elected.

Elections in new counties when held.

SEC. 32. *And be it further enacted*, That an election shall be held on the first Monday and Tuesday in February next, in the several counties from which the counties established by this act shall have been taken, in which vacancies have been occasioned thereby, to fill such vacancies; and also in the several counties established by this act, in which there may be no officer or officers, for the election of a sheriff and clerks of the circuit and inferior courts, or either of them.

Justices of county court, to conduct elections.

SEC. 33. *And be it further enacted*, That in the counties in which elections shall be held by virtue of this act, in which there may be no sheriff, it shall be the duty of the justices of the county court, to conduct the elections in conformity with the election laws of this state.

Addition to Cahawba county.

SEC. 34. *And be it further enacted*, That all that tract of country, commencing where the line dividing the eighteenth from the nineteenth township, thence along said line to where the fourteenth range line crosses Mulberry creek, thence along said range line to the twentieth township, thence east along said township line to the fifteenth range, thence north along said range line to the Shelby county line, thence westward with said line to the main source of Mulberry creek, shall be added to, and make part of Cahawba county.

Places of holding elections in Greene.

SEC. 35. *And be it further enacted*, That the following separate places of holding elections be, and the same are hereby established, to wit: for the county of Greene, at the place of holding courts in said county, at the houses of John Sharpe, Abner Cotton, and Jacob Gillespie, and at the store of Frederick Peck. For the county of Marengo, at the place of holding courts in said county, at the house of Walter Chiles, and at the town of Demopolis.

In Marengo.

CHAPTER VII.

An Act to regulate Elections, establish certain Precincts in the Counties therein named, and for other purposes.—*Passed December* 16, 1819.

Court-houses to be the pla-

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That hereafter the court-house shall be the place of holding ces of holding elections. general elections, in each and every county throughout this state, for the purpose of electing governor, members to congress, members of the general assembly, sheriffs, and clerks. When held. The election at the court-house, as aforesaid, shall be holden on the first Monday and day following, in August, in each and every year.

Time for receiving votes at election precincts. SEC. 2. *And be it further enacted,* That the election holden at other places than the places of holding the general elections in each and every county, shall continue open to receive votes, Duty of managers thereof. the first day of the general elections only: and on the second day of said election, it shall be the duty of the managers, on the close of every election, to count out the tickets. Each manager shall take a memorandum of the number of votes each candidate may obtain, and forward to the managers at the court-house, by the returning officer, a certified statement of the polls of such election; and the managers aforesaid shall return all the tickets so counted into the election box, together with the clerk's list of voters, seal, and safely keep it twenty Contested elections. days. And in case of contested elections, one of said managers shall forward the box, containing the tickets, to the principal Proviso. managers at the court-house. *Provided,* that in all new counties, formed at this session of the general assembly, the votes taken in conformity to this act, shall be returned to the New counties, how to make returns. places of holding the general elections in the counties from which such new counties may have been formed.

Elections, how to be conducted. SEC. 3. *And be it further enacted,* That the elections aforesaid shall be conducted by the sheriff and managers appointed, Forfeiture by sheriff on failing to make return. in the same manner as heretofore by law directed. And if the sheriff shall fail to make a return of the election to the seat of government, in manner and form as by the constitution directed. within the three first days of the session of the general assembly next immediately succeeding such election, he shall forfeit and pay the sum of one thousand dollars, to be recovered by suit, prosecuted by the attorney-general: and when recovered, paid into the public treasury for the use of the state.

Additional duties on managers. * SEC. 4. *And be it enacted,* That in addition to the duties heretofore required to be performed by the said managers of the elections, they shall also be, and hereby are, required to To number the vote or ballot. number the vote or ballot of each and every voter, with the same number that such voter stands marked or enrolled on the lists of the clerks to said elections; the votes from every place of holding said elections, after having been counted, shall Votes to be destroyed. be filed separately, for the space of twenty days: at the end of which time, the said votes shall be destroyed by the managers of the several elections, unless notice shall be given to said managers, that some part or parts of said election will be Except in cases of contested elections. contested; then, and in that case it shall be the duty of the said managers to seal, in one box or packet, the said separate Shall be forwarded to the secretary of state. files, and forward the same to the secretary of state, on or before the first day of the next succeeding session of the general assembly, to be used in evidence by those whose duty it shall be to decide contested elections.

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* An exception to this section, as regards certain counties, has been made by a subsequent act passed Jan. 1st, 1823. See chapter 19 of this title.

Form of oath by managers.

SEC. 5. *And be it enacted*, That the managers of the several elections, in addition to the oath heretofore prescribed by law, shall also swear, that "they will not themselves, or knowingly suffer any other person, to compare the number of said ballots with the number of the votes enrolled by the clerks as aforesaid, but faithfully to discharge the requisitions of this act strictly and impartially."

Election precincts in Wilcox. Perry. Cahawba. Jefferson. St. Clair. Autauga

SEC. 6. *And be it enacted*, That there shall be, and hereby is established, three separate election precincts in the county of Wilcox, one at Canton, one at Prairie Bluff, and one at the dwelling-house of captain William Blacks. In the county of Monroe, in addition to those heretofore existing, there shall be an election precinct at Nicholson's store, on Pigeon creek. In the county of Perry, there shall be three election precincts, one at the dwelling-house of Joseph Brittains, one at the house of William Walters, and one at the house of captain M'Cluskey.* In the county of Cahawba, there shall be two election precincts, one at the Falls of Cahawba river, and one at the dwelling-house of Noah B. Cokers. In the county of Jefferson, there shall be three election precincts: one at the store of Wiggin and M'Whorter, one at the store of King and Brown, and one at Greer's old store-house, near Turkey creek; and by a subsequent act, one at the house of Micaji Lindsay. In the county of St. Clair, there shall be three election precincts; one at the dwelling-house of Mr. Joel Chandler, one at the house of William Guthrey, and one at the house of Peter Ragsdale. In the county of Autauga, there shall be two election precincts; one at the house of Mr. Izard, on the new road leading from Flat creek to Mulberry creek, and one at the house of Joseph Lewis.

[SEC. 7. Relates to Autauga court-house, &c.]

SEC. 8. *And be it enacted*, That separate elections shall be opened and held agreeable to law in and for the county of Marion, at the house of William M'Fadden, in Wilson's settlement; at the house of Archibald Alexander, in Winn's settlement; at the house of John Woods, in Moore's settlement, at some suitable house in the town of Columbus, and at the house of Henry Grier, near the Buttawhatche river in said county.

[SEC. 9. Relates to the seat of justice.]

Election precincts in Lauderdale. Washington. Montgomery.

SEC. 10. *And be it enacted*, That there shall be two election precincts established in Lauderdale county; one at the house of William S. Barton, and one at the house of Thomas Barnet:—And in the county of Washington, one at St. Stephens; one at Carrolton, and one at the present residence of Daniel Fore. And in the county of Montgomery, there shall be three election precincts; one at the house of James Sparks, on Big-swamp creek; one at Pruet's store, on Tallapoosa river, and one at Evansville. In the county of Baldwin, there shall be two election precincts; one at the store of Joseph Mims, and one at the house of Lewis Sewall. In Franklin county; one election precinct at the Big Spring. In the county of Blount, there shall be three additional election precincts; one at Captain Roberts's Muster ground, in Brister's Cove; one at the Muster ground of Captain M'Daniels; and one at Captain M'Pherson's Muster ground on Mulberry fork: In the county of Lawrence, two; one at Courtlandt; and one at Moulton: In the county of Shelby, two; one at the house of Jesse Wilson; and one at the house of David Neal: In the county of Madison, six; one at Brazelton's in the Big Cove; one at Triana; one at Major John Griffin's; one at the place formerly occupied by Major Coteral; one at Hillsborough; and one at Captain Leonard's. In the county of Mobile one, at the Alabama hotel in the town of Blakeley. In the county of Tuskaloosa four; one at M'Cowan's Bluff; one at Jesse Bramlett's; one at Thomas Gove's; and one at Jacob Gillaspie's. In the county of Cotaco, six; one at Levi Taylor's; one at Joseph Smith's horse-mill; one at Daniel Turner's; one at David Williams's; one at Archelaus Craft's; and one at M'Daniel's Ferry. In addition to the places already appointed for holding elections, in the county of Jackson there shall be one at Noah Ward's old place on Paint Rock.

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* Two other precincts for Perry were established in 1820, viz, one at the house of James L. Beard, of Oldtown, and one at the house of William Wardlv

Baldwin. Franklin. Blount. Lawrence. Shelby. Madison. Mobile. Tuskaloosa. Cotaco. Jackson.

[SEC. 11. relates to a jail.]

Elections in Limestone.

SEC. 12. *Be it further enacted*, That there shall be, besides the court-house of Limestone county, three additional places of holding elections in that county: one at Mooresville; one at Strange's mill north of Elk river; and one at Kiser's shop.

Time for keeping polls open in Blakeley.

SEC. 13. *Be it further enacted*, That the same number of days shall be allowed for keeping the polls open to receive votes at the Alabama hotel in the town of Blakeley, as is allowed at the place of holding the general election for the county of Mobile. And it shall be lawful for the returning officers of the several precincts within the county of Mobile, to make the returns to the court-house, (or place of holding the general elections,) of the state of the polls, certified by the managers as early as practicable, within three days after the close of the election at the said precincts.

Time of making returns of votes at certain election precincts.

SEC. 14. *Be it further enacted*, That for the year 1820, it shall be lawful for the returning officers of the several precincts within the counties of Conecuh, Butler, Henry, Monroe, Wilcox, Dallas, Perry, Marengo, Greene, Jefferson, and Blount, to make their returns to the respective court-houses, (or places of holding the general elections,) the statement of the polls, certified by the managers as early as practicable, within three days after the close of the election at the said precincts.

CHAPTER VIII.

An Act to amend an Act to regulate Elections, establish certain Precincts in the Counties therein named, and for other purposes, passed on the 16th of December, 1819.—*Passed December* 4, 1820.

Polls kept open one day only.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That in all elections hereafter to be holden in this state for governor, members to congress, members of the general assembly, sheriffs, and clerks, that the polls shall be kept open but one day for receiving votes at the different places of holding courts in each county only, as well as at the different precincts.

Hour for closing poll.

SEC. 2. *And be it further enacted,* That the polls shall be kept open at the elections to be held at the different places of holding courts in each county, till the hour of five o'clock in the afternoon of said day.

CHAPTER IX.

An Act defining the Boundaries of Marion County, passed December 19th, 1820, establishes an Election Precinct at the house of William Davis, on the Sypsey Fork of the Buttahatchie River, and one Precinct at the house of Joel Dixon, on the head of Tooksaopalala. And by the same Act, an Election Precinct is established for Pickens County, at Mullen's, on the road from Columbus to the Falls of the Warrior, and at James Heplin's, and one at the residence of Ezekiel Nash.

CHAPTER X.

An Act to establish certain Election Precincts therein named, and for other purposes.—*Passed December* 20, 1820.

In Dallas.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That there shall be four election precincts in the county of Dallas, in addition to the one heretofore established in said county, to wit: one at Selma, one at Portland, one at the house of Mr. Frederick, on Town creek, and one at the present dwelling-house of Captain Yoast.

Cotaco.

SEC. 2. *And be it further enacted,* That there shall be in the county of Cotaco four election precincts, in addition to the one holden at the court-house, to wit: one at the house of John Wallis, Centreville; one at the house of Larkin R. Rogers, and one at the town of Decatur.

Wilcox.

SEC. 3. *And be it further enacted,* That there shall be in the county of Wilcox two election precincts, in addition to those already provided for by law, to wit: one at the house of John Smith, near the bluff, generally known and called by the lower standing Peach Tree, and one at the store house of Allen and Saltmarsh, at the bluff known and called by the name of the upper standing Peach Tree.

Autauga.

SEC. 4. *And be it further enacted,* That the election precincts heretofore held at the house of Joseph Lewis, in the county of

Autauga, shall hereafter be discontinued, and one established in lieu thereof at the house of John Lewis, in said county.

Montgomery. SEC. 5. *And be it further enacted*, That the two election precincts heretofore established at Pruet's store, and Evansville, shall be hereafter discontinued, and one established in lieu thereof at the town of Augusta, in Montgomery county.

Montgomery. SEC. 6. *And be it further enacted*, That there shall be two additional election precincts in the county of Montgomery, one at the house of James F. Johnston, at Captain Bennet's muster ground, and the other at the house of James Ramsay, at Captain Wade's muster ground.

Tuskaloosa. SEC. 7. *And be it further enacted*, That there shall be three election precincts in the county of Tuskaloosa, in addition to those already established by law, to wit: one at Captain Coon's muster ground, one at Captain John Hudson's muster ground, and one at Captain Henry Pickard's muster ground.

Jackson. SEC. 8. *And be it further enacted*, That there shall be in the county of Jackson two election precincts, in addition to those already provided for; one at Doyle's mill, between Crow creek, and the other at Reid's, on Larkin's fork, on Paint rock.

St. Clair. SEC. 9. *And be it further enacted*, That the elections heretofore held at William Guthrey's, shall hereafter be held at the house of Henry Bradford, in St. Clair county.

CHAPTER XI.

Extract from an Act, passed in 1820.

Elections. SEC. 4. *And be it further enacted*, That the election heretofore authorized to be holden at the house of William Coats, shall hereafter be held at the court-house.

CHAPTER XII.

An Act appointing Additional Precincts for holding Elections in the County of Bibb.—*Passed December 20, 1820.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That in addition to the places now appointed by law for holding elections in the county of Bibb, an election shall be held at the house of Henry W. Stevens, and one at the house of John Allen, in said county. This act shall commence, and be in force from and after the passage thereof.

CHAPTER XIII.

An Act to repeal the Second Section of an Act, passed the 20th of December, 1820, to Establish certain Election Precincts therein mentioned, and for other purposes.—*Passed June 12, 1821.*

Election precincts in Cotaco county. SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That there shall be five election precincts in the county of Cotaco, in addition to the one holden at the court-house, viz.: one at the house of James Thomberson; one at the store-house of Craft and Holly; and at the house of Larkin R. Rogers; one at the house of William Johnstone, in Centreville; and one at the house of Jesse White, in Decatur.

SEC. 2. *And be it further enacted*, That in the county of Tuskaloosa, there shall be an additional election precinct at the house of William Cavenish. Tuskaloosa.

SEC. 3. *And be it further enacted*, That in the county of Limestone, there shall be an election precinct at the house of Edward Massey, in addition to those already provided for by law. Limestone.

[SEC. 4. relates to Marion court-house.]

SEC. 5. *And be it further enacted*, That the election precincts heretofore established at the houses of William M'Fadden and John Woods, in the county of Marion, be, and the same are hereby declared to be discontinued; and in lieu of the same it is hereby declared, that hereafter, there shall be an election precinct at the house of Jabez Fitzgerald in the said county of Marion.

CHAPTER XIV.

An Act amendatory of certain Acts, and to establish certain Election Precincts. *Passed June 13, 1821.*

[SEC. 1. relates to a court-house.]

SEC. 2. *And be it further enacted*, That an election precinct be, and is hereby established at the house of Cox, near Coal-Fire creek, in Pickens county. Election precincts in Pickens.

SEC. 3. *And be it further enacted*, That there shall be an election precinct in the county of Jackson, on the Hurricane Fork of Flint river, at the house of the Widow Campbell, in addition to those precincts already prescribed by law. Election precincts in Jackson.

SEC. 4. *And be it further enacted*, That an election precinct is hereby established at the house of William Blackshear in the county of Conecuh, in addition to those already established. Conecuh.

SEC. 5. *And be it further enacted*, That an election precinct be established at Bainbridge, in the county of Franklin. Franklin.

CHAPTER XV.

* Resolution establishing certain additional Election Precincts in the county of Henry.—*Passed June 13, 1821.*

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That there shall be established in Henry county, in addition to those already established, three election precincts, to wit: one at James's, on Pea river; one at Turner's, on Chocktawhatchie; and one at Edward Cox's, on Chocktawhatchie.

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* See title 14, chapter 54th, for an Act establishing additional Election Precincts in the county of Henry.

CHAPTER XVI.

An Act to establish additional Election Precincts in certain Counties therein named, and for other purposes.—*Passed December* 3, 1821.

Lauderdale. SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That there shall be three additional election precincts in the county of Lauderdale: one at the house of William Howe, esq. living on the Military road; one at the house of Andrew M'Mickens, esq.; and one at the house of Joel Burrows, esq.

Shelby. SEC. 2. *And be it further enacted,* That an election precinct be, and is hereby established at the house of Henry Robertson, in the Coosa valley, in the county of Shelby, in addition to those already recognized by law in said county.

Conecuh. SEC. 3. *And be it further enacted,* That an election precinct be, and is hereby established at the house of David Hendrick, in the county of Conecuh, in addition to those already recognized by law in said county.

Lawrence. SEC. 4. *And be it further enacted,* That an additional election precinct be, and is hereby established in the county of Lawrence, at the house of Joseph Scales, on Town creek, where the road leading from Courtland to the Big Spring crosses the same.

Baldwin. SEC. 5. *And be it further enacted,* That there be an additional election precinct held in the county of Baldwin, at the house of William Weeks, on Fish river.

Pickens. SEC. 6. *And be it further enacted,* That there be an additional election precinct in the county of Pickens, at the house of —— Holland.

Lawrence. SEC. 7. *And be it further enacted,* That there be two additional election precincts in the county of Lawrence, one at the house of Washington McGaha, in McGaha's settlement, and the other at the house of Nathaniel Norwood, in section sixteen, township seven, and range six.

Monroe. SEC. 8. *And be it further enacted,* That there be three additional election precincts in the county of Monroe, one at the house of John Welch; one at the house of Lark Abney; and one at Gainestown.

Monroe. SEC. 9. *And be it further enacted,* That there shall be an additional election precinct in the county of Monroe, at the house of Arthur Foster.

Discontinued. SEC. 10. *And be it further enacted,* That the election precinct heretofore established at the Choctaw Bluff, be, and the same is hereby made void.

Precinct in Conecuh. SEC. 11. *And be it further enacted,* That the election precinct heretofore established at Cumming's Mills, in the county of Conecuh, be, and the same is hereby discontinued: And that an additional election precinct be established at Zuber's store in said county.

Election precincts in Covington established. [SEC. 12, *of another act of the same session.*—The election precincts heretofore established in that part of Henry, which is now known by the name of Covington county, shall be, and they are hereby established as precincts for Covington county.]

Limestone.

Sec. 12. *And be it further enacted*, That the elections heretofore held at Straing's mill, in Limestone county, be hereafter held at the dwelling-house of the said Edmund Straing, in said county.

St. Clair.

Sec. 13. *And be it further enacted*, That there shall be an additional election precinct held at the muster ground of Captain Nutts, in the county of St. Clair.

Madison.

Sec. 14. *And be it further enacted*, That there shall be one additional election precinct at the house of Captain Jacobs, at Ditto's landing, in Madison county.

Jefferson.

Sec. 15. *And be it further enacted*, That there be an additional election precinct at a place called the Old Town, in Jefferson county.

Repeal.

Sec. 16. *And be it further enacted*, That the third section of an act, to repeal the second section of an act, passed the 20th December, one thousand eight hundred and twenty, to establish certain election precincts therein mentioned, and for other purposes, be, and the same is hereby repealed.

Precinct at Squire Saunders's.

Sec. 17. *And be it further enacted*, That the election precinct formerly held at Squire Lindsey's be discontinued, and in future, held at Squire Saunders's.

Meridianville.

Sec. 18. *And be it further enacted*, That there shall be an additional election precinct at the house of Drury Connally, in Meridianville, in Madison county.

At Farler's.

Sec. 19. *And be it further enacted*, That there shall be an additional election precinct established at the house of Mr. Farler, the place where Abraham Lewis formerly lived, on the road leading from Huntsville to Col. Burrus's, in Madison county.

In Dallas.

Sec. 20. *And be it further enacted*, That there shall be an additional election precinct at the house of Joseph Van, for the county of Dallas; and an additional election precinct at the house of Michael Carter, for Henry county.

Commencement.

Sec. 21. *And be it further enacted*, That this act shall commence and be in force from and after the passage thereof.

CHAPTER XVII.

Extract from an Act of the same Session.

Precinct in Perry county.

Sec. 5. *And be it further enacted*, That an election precinct is hereby established at the house of John Mahon, on the waters of Big Mulberry creek, in the county of Perry.

CHAPTER XVIII.

Extract from an Act to compensate the Commissioners of Butler County.— *Passed December 15, 1821.*

Election precincts.

Sec. 3. *And be it further enacted*, That an additional election precinct be established at Buttsville, in Butler county:

and that the election precinct heretofore established at Fort Dale, be, and the same is hereby discontinued.

CHAPTER XIX.

Resolution to regulate Elections, by the General Assembly of this State.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That in all elections by the General Assembly, the votes shall be given for one election only, at the same time: and that a majority of the whole number of votes shall be necessary to a choice; that the members of both houses will assemble in the Representative Chamber, and the names of the members of each house shall be called by their respective clerks: Whereupon, the president of the senate and speaker of the house of representatives shall ascertain the result; which shall be announced by the speaker of the house of representatives.

NOTE.—As to the election of Justices of the Peace, Commissioners of Roads, Militia Officers, &c.; the laws relating to them will be found under their respective titles.

CHAPTER XX.

An Act to repeal in part and amend an Act, entitled An Act to regulate Elections, &c. passed at Huntsville, December 16th, 1819.—*Passed Jan.* 1, 1823.

Duties of managers of elections in certain counties.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all managers of elections in the counties of Covington, Henry, and Pike, for electing a Governor, members of Congress, members of the General Assembly, sheriffs, and clerks, be, and they are hereby required to keep and file all ballots or tickets taken at their respective precincts, together with their clerks' lists of voters, in the manner now provided for by law, for the space of sixty days, from and after the day on which said elections are held; and if no notice be given to them within that time, that any or part of any election or elections, so held, will be contested, said managers shall destroy said ballots.

Elections, how conducted.

SEC. 2. *And be it further enacted*, That all elections held in the aforesaid counties, shall in all other respects be conducted in the manner provided for by laws now in force in this state, regulating elections; and that all laws or parts of laws contravening the provisions of this act, be, and the same are hereby repealed.

Repeal.

CHAPTER XXI.

An Act to divide the State into Districts for electing Representatives to Congress.—*Passed December* 21, 1822.

Preamble.

Whereas by the census of the United States, taken in conformity to the constitution and law thereof, it appears that this state will be entitled to elect three members to the House of Representatives of the United States;

State divided into districts.

Sec. 1. *Be it therefore enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That this state shall be, and is hereby divided into three districts as follows, to wit: That the counties of Madison, Jackson, Decatur, Limestone, Lauderdale, and Lawrence, shall constitute one district, to be called the northern district; that the counties of Tuskaloosa, Pickens, Franklin, Morgan, Blount, Jefferson, St. Clair, Shelby, Bibb, Marengo, Perry, Greene, and Marion, shall constitute one district, to be called the middle district; and that the counties of Monroe, Conecuh, Henry, Pike, Covington, Montgomery, Dallas, Wilcox, Butler, Clarke, Washington, Autauga, Mobile, and Baldwin, shall constitute one district, to be called the southern district: each of which districts shall be entitled to elect one representative to the Congress of the United States, who shall be chosen by the persons qualified to vote for members of the Legislature of this state.

Each district to elect one representative.

Representatives, when and how elected.

Sec. 2. *And be it further enacted*, That the election of representatives from this state to the Congress of the United States, shall be held at the same times and places, and be regulated and conducted by the same law for holding elections for members to represent the several counties in the General Assembly of this state, and at the same times and places every two years thereafter; all of which elections are to be conducted by the sheriffs or by other persons legally appointed therefor, in like manner as the annual elections of the members of the State Legislature; and the person having the greatest number of votes in any of the aforesaid districts, shall be the member for that district in the Congress of the United States.

Duty of managers of elections.

Sec. 3. *And be it further enacted*, That the managers of each election which may be held for the several counties in this state shall, and they are hereby required to keep a separate box, in which shall be deposited the ballots for a representative from this state to Congress.

Elections, how conducted.

Sec. 4. *And be it further enacted*, That immediately upon the close of the elections in each county in this state, the presiding officer at each place of election shall, in the presence of the inspectors, proceed to count in a public manner the ballots, and shall keep an account in writing, the number of votes each candidate or person voted for shall have, and in presence of the inspectors cast up the scrolls, and make a correct statement of the number of votes given thereat, for each candidate or person voted for in each county; which shall be certified by the sheriff or other persons appointed to conduct the elections, and a majority of the inspectors.

Elections, to whom returned.

Sec. 5. *And be it further enacted*, That the managers of the several election precincts in each of the counties composing the several election districts throughout this state, where counties have more precincts than one, shall make returns to the sheriffs at the court-houses or seats of justice in their respective counties, within two days thereafter, and the managers aforesaid shall return all the tickets so counted out into the election box, together with the clerks' lists of votes sealed up, to the principal managers at the court-house in their respective counties; and it shall be the duty of the said managers to keep said election boxes thus returned to them, for the space of sixty days, at the end of which time, the said votes shall be destroyed by the managers of the elections held at the court-houses in each county; unless notice shall be given to said managers, that some part or parts of said election will be contested; then and in that case, it shall be the duty of said managers to preserve the same.

Contesting election.

Returning officer.

SEC. 6. *And be it further enacted,* That the sheriffs or other returning officers of the counties of each district shall meet on the second Monday in September next after each election, at the court-house of the county first mentioned in their respective districts: *Provided always,* that if any accident shall happen to either of the returning officers, which may prevent any or either of them from meeting on the day aforesaid, the returns of each and every officer shall be received on the second Monday thereafter, and the sheriff or other returning officer failing to attend at the time and place above mentioned, shall forfeit and pay the sum of one thousand dollars, to be recovered for the use of the state, upon due proof thereof, in any court of law in this state by an action of debt, in the name of the comptroller of the state for the time being.

Penalty on failing to attend.

Polls examined.

SEC. 7. *And be it further enacted,* That when the sheriffs or other returning officers shall be convened as aforesaid, the polls for the different counties shall by said sheriffs or other returning officers, (as the case may be,) in presence of two justices of the peace who are to be summoned, or other returning officer of the county where they shall meet for that purpose, be examined and compared, and a certificate under the hands and seals of said returning officers shall be given to the candidate in each district for whom the greatest number of votes shall have been given in each district; but if two or more candidates shall have an equal number of votes, the said returning officers shall determine which of them shall be the representative.

Certificate.

Equal votes determined.

Governor to commission those elected.

SEC. 8. *And be it further enacted,* That each and every person who shall be duly elected representative under this act, upon obtaining a certificate of his election, which shall be signed by a majority of all the returning officers of the district, His Excellency the Governor, on such certificate being produced to him, shall issue a commission certifying his appointment as a representative of this state to the Congress of the United States.

Compensation of sheriffs.

SEC. 9. *And be it further enacted,* That every sheriff or returning officer shall be allowed the sum of three dollars, for every day he shall necessarily attend for the purpose of comparing said polls, and also the amount of his ferriages; which shall be paid by the treasurer of this state, on affidavit of the sheriff or returning officer aforesaid.

SEC. 10. *And be it further enacted*, That no person shall be eligible as a representative to Congress from any of the aforesaid districts, who is not at the time of his election a resident citizen of the district in which he is elected.

Persons eligible.

SEC. 11. *And be it further enacted*, That should the present Congress not allow this state three representatives in Congress, then and in that case, this state shall be, and is hereby divided into two districts as follow, to wit: The counties of Madison, Decatur, Limestone, Lauderdale, Franklin, Lawrence, Morgan, Marion, Blount, St. Clair, and Jefferson, shall constitute one district: that the counties of Dallas, Perry, Greene, Tuskaloosa, Pickens, Bibb, Autauga, Shelby, Montgomery, Henry, Pike, Covington, Wilcox, Butler, Monroe, Conecuh, Baldwin, Mobile, Washington, Clarke, and Marengo, shall constitute one district; each of which shall be entitled to elect one representative to the Congress of the United States.

State divided into two districts, in event, &c.

1st. District.

2d. District.

SEC. 12. *And be it further enacted*, That when any vacancy shall happen by death, resignation, or otherwise, in the representation of the people of this state in the house of representatives of the United States, the Governor of this state, or the person exercising the powers thereof, shall issue his writ or writs of election to the sheriffs of the counties of which the congressional district is composed, commanding such sheriffs on a certain day therein particularly expressed, to hold an election to supply such vacancy: and such writs so issued by the Governor shall be delivered to the sheriffs, to whom the same may be directed, at least thirty days before the day appointed for such election, who shall give public notice thereof throughout the county, at least twenty days before such election; and such elections shall be holden and conducted in the same manner as the general elections are, for electing representatives to the Congress of the United States.

Vacancies, how filled.

SEC. 13. *And be it further enacted*, That the sheriffs of the counties of Madison, Tuskaloosa, and Monroe, shall be the returning officers for their respective congressional districts; and the sheriffs of the other counties of the district shall make return to the returning officers abovementioned: *Provided*, That should this state be composed of two congressional districts only, then the sheriffs of Madison and Dallas counties shall be the returning officers of their respective congressional districts; and the sheriffs of the other counties of the districts shall make return to the returning officers herein named.

Returning officers.

Proviso.

CHAPTER XXII.

An Act to establish certain Election Precincts in the Counties therein named.
Passed December 26, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the election precinct heretofore established at the house of Frederick, on Town creek, in the county of Dallas, be, and the same is hereby discontinued; and that an election precinct is

Election precincts in Dallas county.

hereby established at the house of Daniel Hardy, on Old-Town creek, in said county.

Additional in Dallas. SEC. 2. *And be it further enacted*, That an additional precinct for Dallas county, is hereby established at the house of James S. Gaines, on the road leading to Perry court-house; and one at the house of Richard Hall, in the Mulberry settlement: and that the election precinct late at the house of Capt. Yoast, be, and is hereby discontinued.

In Conecuh. SEC. 3. *And be it further enacted*, That the following election precincts be established in the county of Conecuh, to wit: one at the house of George Constantine; one at Brooklyn; and one at Rabb's store: and that the precincts heretofore established at the house of James Caldwell, and at the house of William Blackshire, be, and they are hereby discontinued.

In Marengo. SEC. 4. *And be it further enacted*, That there be an election precinct, in addition to those already established, at the house of Alexander M'Leod, in Marengo county.

In Tuskaloosa. SEC. 5. *And be it further enacted*, That the following additional election precincts shall be established in the county of Tuskaloosa, to wit: one at the house of Capt. Manly Files on North river; and one at the Mill of James Foster, esq. on Grant's creek.

Montgomery. SEC. 6. *And be it further enacted*, That the election precincts heretofore established at the house of James Sparks and Johnson's in Montgomery county, be, and the same are hereby discontinued; and that an election precinct be established at John Steele's store; and one at the house of William Graves, in the neighbourhood of said Johnson, in said county.

Mobile. SEC. 7. *And be it further enacted*, That an additional election precinct be established at the house of Traverse George, in the county of Mobile.

Shelby. SEC. 8. *And be it further enacted*, That in addition to the election precincts already established in the county of Shelby, one shall be established at Harpersville, at the house of John Kidd.

Jackson. SEC. 9. *And be it further enacted*, That Jackson county shall have an additional election precinct, at the house of Thomas Williams on Racoon creek.

Decatur. SEC. 10. *And be it further enacted*, That the election precinct heretofore had at William W. Pruet's in Decatur county, be, and the same is hereby discontinued; and one in lieu thereof, at the house of Wyatt Lawes in said county, be hereby established.

Marion. SEC. 11. *And be it further enacted*, That there shall be two election precincts established in Marion county, in addition to those heretofore established: one at the house of Joseph Burleson, on Buttahatche river; and one at the house of William H. Ragsdale, on the military road.

St. Clair. SEC. 12. *And be it further enacted*, That in addition to the election precincts already established in the county of St. Clair, there shall be an election precinct at the house of Henry Box, esq. in Coosa valley.

Morgan.

Sec. 13. *And be it further enacted*, That an additional election precinct be, and is hereby established at the house of Adam Torrance, in the county of Morgan.

Limestone.

Sec. 14. *And be it further enacted*, That the law establishing an election precinct at Ryser's shop, in Limestone county, be, and the same is hereby repealed; and that an election precinct be established at the house of John Hardin, in said county.

Wilcox.

Sec. 15. *And be it further enacted*, That in addition to the election precincts already established in the county of Wilcox, an election precinct is hereby established at the house of Obadiah Dumas; and also an election precinct is hereby established at the house of John M'Condichie, senior, on Cedar creek, the north side of Pine Barren creek.

Perry.

Sec. 16. *And be it further enacted*, That in the county of Perry, the election precincts at Capt. William Waters's and Doctor Locket's, in Old-town settlement, be, and the same are hereby abolished; and in lieu thereof, there shall be an election precinct at Durden and Oliver's store, and an additional election at   Milton's, on the Oakmulgee creek; the election precinct at Capt. M'Cuskey's be, and the same is hereby abolished; and in lieu thereof, there shall be a precinct on Brush creek, at the house of Samuel Tubb; and a precinct at the house of Richmond Carroll.

Greene.

Sec. 17. *And be it further enacted*, That the election precinct heretofore established at the house of Capt. Daniel, in the county of Greene, be discontinued; and a precinct in lieu thereof be established at the muster ground of Capt. Trussel: and also, that the election precinct heretofore established at the house of Abner Cotton, be discontinued, and a precinct in lieu thereof be established at the muster ground of Capt. Bell.

Blount.

Sec. 18. *And be it further enacted*, That the election precincts in the county of Blount, shall be as follows: the election precinct at Capt. Roberts's muster ground be discontinued; and in lieu thereof, the election shall be held at the muster ground of Capt. Brinlie, at the house of Jesse Watson; and that the precinct election at the muster ground of Capt. M'Daniel be discontinued, and in lieu thereof, the election shall be held at the house of James Anderson, senior; one other election precinct at the house of James Doyle; and one other at the house of Thomas A. Williams, in said county.

Pickens.

Sec. 19. *And be it further enacted*, That there shall be an additional precinct election held at the house of Jesse Clements in the county of Pickens; and that the election held at the house of Coxe shall be discontinued.

Conecuh.

Sec. 20. *And be it further enacted*, That two additional election precincts be established in the county of Conecuh, one at the house of John Bell, and one at the house of James Grace; and that the election precinct heretofore established at the house of David Hendrick, is hereby discontinued.

Lawrence.

Sec. 21. *And be it further enacted*, That the election precinct heretofore established at Geo. W. M'Gaughie's, in the county of Lawrence, be, and the same is hereby discontinued; and in lieu thereof, that an election precinct be established at the muster ground of Captain Blackwell's company in said county.

Monroe. Sec. 22. *And be it further enacted*, That in addition to the election precincts heretofore established in the county of Monroe, an election precinct is hereby established at the house of Joses Parker, in said county; and also an election precinct be established at the house of Matthew Averett, in said county.

Bibb. Sec. 23. *And be it further enacted*, That in the county of Bibb, there shall be an election precinct established at the house of Daniel Williams, esq. on Mulberry creek, in said county.

ESCHEATS.—1811.

CHAPTER I.

An Act concerning Escheats.—*Passed December* 13, 1811.

The property of persons who may die intestate, leaving no lawful heir, &c.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the estate, both real and personal, within this territory, of persons who have died intestate, or who may hereafter die intestate, leaving no lawful heir or heirs within the limits of the United States, shall be considered as escheated to the Mississippi Territory.

Sec. 2. *And be it further enacted*, That all property that may escheat under this act, during the term of ten years, shall be vested in the trustees of Jefferson College, for the use and benefit of said college.

CHAPTER II.

An Act to amend the Act concerning Escheated Property.—*Passed December* 10, 1816.

Property of persons who die intestate without heirs to escheat to the Mississippi Territory. Proviso, in favour of Jefferson college.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the estate, both real and personal, within this territory, of persons who have died intestate, or who may hereafter die intestate, leaving no lawful heir or heirs, shall be considered as escheated to the Mississippi Territory: *Provided*, That nothing in this act contained shall be so construed as to impair the right of Jefferson College to such property as may escheat to that institution, by virtue of the act heretofore passed on that subject, during the term of years mentioned in said act.

Repealing clause.

Sec. 2. *And be it further enacted*, That all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER III.

An Act to alter and amend an Act, entitled "An Act concerning Escheats."
Passed February 10, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That the second section of the act concerning escheats, passed the thirteenth day of December, eighteen hundred and eleven, be, and the same is hereby repealed.

Repealing clause.

EXECUTIONS AND INSOLVENT DEBTORS.
1807.

The following act concerning executions, and for the relief of insolvent debtors, is, as to its leading provisions, borrowed almost *verbatim* from an act of the general assembly of the commonwealth of Virginia, passed in , and an act to reduce into one the several acts and parts of acts concerning executions and for the relief of insolvent debtors, passed in Virginia in and in Kentucky, with some variations, on December 19, 1796. By attending to this circumstance it will be easy to account for some inconsistencies which may probably be discerned in several sections of this law. This being the origin of the law, it will not be useless or uninteresting to quote the valuable observations of that excellent compiler and commentator, William Littell, Esq. who in his prelections to the last-mentioned act, makes the following observations:

"On this perplexing and embarrassing part of the law of Kentucky, I fear that little can be offered which will be satisfactory to the reader. The oldest act of assembly which can be considered as directly in force is the act of 1748, chapter 8. By the preamble of this act the legislature seem to disclaim any intention of introducing new principles of substance, but merely to confine themselves to regulating matters of form.

"Whereas by the common law of England, and divers acts of parliament, which are binding upon the subjects of this colony, all persons recovering any debt, damage, or costs, by the judgments of any court of record, may, at their election, prosecute writs of *fieri facias, elegit, and capias ad satisfaciendum,* within the year for the taking the goods, lands, or body of the person or persons against whom such judgment is obtained: To the end the several writs issuing out of any of the courts of record within this dominion, and the manner of executing and returning the same, may be uniform, and the mischiefs arising from the incorrect forms and insufficient returns of such writs prevented, &c.

"They then proceed to give the forms of the several writs of execution and the sheriff's returns thereon; all which have been transcribed (*mutatis mutandis*) into the present act. As a further evidence of their 'reverence for the laws of England,' they transcribed the statute 21 of James I. the substance of which is retained in the ninth section of the present act.

"It is an established maxim of the English law that the sheriff is bound to return on the execution the *value of the goods he has seized,* and that he is answerable for that *value,* let the goods sell for what they may—3 *Saunders* 334, 6 *Mod.* 290—and the legislature of 1748, and of 1796, seem to recognise this principle in the form which they have given of a *venditioni exponas.* But by a variety of regulations which have from time to time been introduced, I am inclined to believe this maxim of the English law has been entirely abrogated. A brief contrast of the execution laws of the two countries will show the reader my reasons for drawing this conclusion, and at the same time with what caution the English cases on this subject ought to be received as authority.

"*First.*—By the law of England, an execution, though in form and on the face of it returnable, is not so in substance; but it is entirely at the election of the plaintiff whether it shall ever be returned or not. But by the law of Virginia and Kentucky it is substantially a returnable writ.

"*Secondly.*—By the law of England, seizing the goods vests the property of them (general or special) in the sheriff, and gives him complete authority to sell them, which he may do as well without a *venditioni exponas* as with one. In England a *venditioni exponas* is merely a writ in the nature of a *mandamus* to compel the sheriff to do what he has full authority, and in duty bound to do without such writ. But in Virginia and Kentucky it is doubtful whether the sheriff acquires any property by the seizure of the goods, except that presumptive property which the actual possession gives, and whether he can sell them after the return day of the execution. Here it would seem that a *venditioni exponas* is not a mere mandatory writ, but is the authority under which the sheriff sells, and it is as necessary to give him authority to sell, as a *fi. fa.* is to give him authority to seize the goods of the defendant.

"*Thirdly.*—In England, the sheriff is intrusted generally to effectuate a certain end, to wit, to make the money out of the goods of the defendant, and is vested with the general means of doing it, viz. by a sale; but these means he may modify at his discretion. The law imposes on him no etiquette or formality of proceeding. But in Virginia and Kentucky a special mode of proceeding is precisely dictated, the sheriff bound to pursue it, and a sale made otherwise than by law directed, it is presumed, would be void.

"Upon the whole, I think we may reasonably infer, that as the legislature of Kentucky have given the sheriff no control over the *means*, they did not intend that he should be answerable for the *end*."

CHAPTER I.

An Act concerning Executions, and for the Relief of Insolvent Debtors.—*Passed February* 7, 1807.

How executions may issue or judgments.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That all persons who have or shall hereafter recover any debt, damages, or costs by the judgment of any court of record within this territory, may at their election prosecute writs of *fieri facias*, *elegit*, and *capias ad satisfaciendum*, within the year, for taking the goods, lands, or body of the person or persons against whom such judgment is obtained, in manner following, all such writs shall run in the name of the Mississippi Territory of the United States, and bear teste by the clerks of the said courts respectively, shall be returnable to the first day of the next succeeding court,* so that there be always at least fifteen days between the teste and return of each of the said writs: *Provided*, That if the plaintiff shall desire an execution to issue returnable at a further day, the clerk shall issue the same accordingly, so as the day of such return be upon a court day, within ninety days next after the teste thereof, and that the forms of the said several writs shall be as follows, *mutatis mutandis*:

Teste and return.

Form of a fieri facias in debt.

"The Mississippi Territory of the United States, to the sheriff of   county, greeting: We command you, that of the goods and chattels of A. B. late of your county, you cause to be made the sum of   , which C. D. lately in our   court hath recovered against him for debt; also the sum of   , which to the said C. D. in the same court, were adjudged for his damages; as well by reason of the detention of the said debt, as for his costs in that behalf expended;

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* They are now required to be returned three days previously to the term of the court. See chapter 17, of this title.

whereof the said A. B. is convicted as appears to us of record, and that you have the said before the judges, (or justices, as the case may be) of our said court, on the day of next, to render to the said C. D. of his debt and damages aforesaid; and have then and there this writ.

Witness, &c."

In case.

The same in case, upon a promise—

As before, unto "for his damages which he hath sustained, as well by reason of the non-performance of a certain promise and assumption by the said A. B. to the said C. D. lately made, as for his costs by him about his suit in that behalf expended, &c."

In trespass.

As before, unto "for damages as well by occasion of a certain trespass by the said A. B. to the said C. D. offered, as for his costs, &c."

If for the defendant, say—

"For his costs about his defence in a certain action at the suit of the said, &c."

In covenant.

As before, unto "for damages, &c. by reason of a breach of a certain covenant between the said A. B. and C. D. lately made, &c."

The form of a writ of elegit.

The Mississippi Territory of the United States, to the sheriff county, greeting: Whereas A. B. at our court, &c. before our judges (or justices) held, hath recovered against C. D. the sum of , which to the said plaintiff was adjudged for a certain debt or damages (as before) and the said A. B. hath chosen to have delivered to him all the goods and chattels of the said C. D. saving only the oxen and beasts of his plough, and also a moiety of all his lands and tenements in your county, to have and to hold the goods and chattels aforesaid, as his own proper goods, and the said moiety as his freehold, to him and his assigns, until he shall have levied thereof the debt and damages aforesaid; therefore we command you, that you cause to be delivered all the goods and chattels of the said C. D. saving the oxen and beasts of his plough, and also a moiety of all his lands and tenements in your county, whereof he at the day of obtaining the said judgment was seized, or at any time afterward, by reasonable price and extent, to have and to hold the said goods and chattels, to him the said A. B. as his own proper goods and chattels, and the said moiety as his freehold, to him and his assigns, until he shall have levied thereof the debt and damages aforesaid; and that you certify to our said judges (or justices) under your own seal, and the seals of those by whose oath you shall make this extent and appraisement, how you execute this writ, the day of and have then and there this writ."

A capias ad-satisfaciendum.

"The Mississippi Territory of the United States, to the sheriff of county, greeting: We command you, that you take A. B. late of your said county, if he be found therein, and him safely keep, so that you have his body before the judges (or justices) of our court, &c. the day of next, to satisfy C. D. the sum of which the said C. D. hath recovered against him for debt, also,"

&c. as before, in case, trespass, or covenant, as in the *fieri facias*.

Which said writs, so issued, shall be executed by the sheriff or other officer, to whom the same shall be directed, and shall be returned according to the respective forms hereafter mentioned.

The return of a fieri facias.

"By virtue of this writ, to me directed, I have caused to be made the within mentioned sum of , of the goods and chattels of the within named A. B. which said sum of before the judges (or justices) within mentioned, at the day and place within contained, I have ready, as that writ requires." Or:—"The within named A. B. hath no goods or chattels within my county, whereof I can make the sum of within mentioned, or any part thereof."

Or:—"By virtue," &c. "I have caused to be made of the goods and chattels of the within named C. D. the sum of , in part of the debt and damages within mentioned, and I do further certify that the said A. B. hath no more goods and chattels within my county, whereof at present I can make the residue of the said debt and damages, as by the said writ is required."

Return of a writ of elegit.

Inquisition indented, taken at , in the county aforesaid, the day of , in the year of our Lord , before me, E. F. sheriff in the county aforesaid, by virtue of a writ to me directed, and to this inquisition annexed, and by the oaths of A. B. C., &c. good and lawful men of said county, who being charged and sworn, upon their oath do say, that A. B. in the said writ, to this inquisition annexed named, the day of the caption of this inquisition, was possessed of the goods and chattels following, as of his own proper goods, to wit: , of the price of , which I, the said sheriff, have caused to be delivered to the said C. D. to hold to him as his own proper goods and chattels, in part of satisfaction of his debt and damages aforesaid, in the said writ mentioned: *And further*, the said jurors, upon their oath do say, that the said A. B. at the time of rendering the judgment aforesaid, was seized in his own demesne, of fee, of and in (here name the houses and lands.) with the appurtenances, of the annual value, in all the issues beyond reprises, of dollars; acres of which, or thereabouts, are a true and equal moiety of all and singular the lands, tenements, and hereditaments whatsoever, in the county aforesaid, of the said A. B. which said moiety, I, the said sheriff, the day aforesaid, to C. D. in the said writ named, at a reasonable extent, have delivered, to hold to him and his assigns, as his freehold, according to the form of the act in that case made and provided, until he shall have levied the residue of the debt and damages aforesaid, as the writ aforesaid requires: *And further*, the said jurors, upon their oath, do say, that the said A. B. at the time of giving the judgment aforesaid, had not, nor at the day of taking this inquisition, hath any other or more goods and chattels, lands or tenements, in the county aforesaid, to the knowledge of the jurors aforesaid: in testimony whereof, as well I, the said sheriff, as the jurors aforesaid, to this inquisition have severally put our seals, the day, year, and place above mentioned.

Return of a capias ad satisfaciendum.

"By virtue of this writ, to me directed, I have taken the within named A. B. whose body before the judges, (or justices,) within named, at the day and place within contained, I have ready to satisfy C. D. of the debt and damages within mentioned."

Or:—"The within named A. B. is not found within my county."

If the first writ be not executed, another may issue.

SEC. 2. *And be it further enacted*, That when any execution shall issue, and the party at whose suit the same is issued, shall afterward desire to take out another writ of execution, at his own proper cost and charges, the clerk may issue the same, if the first writ be not returned and executed; and where, upon a *capias ad satisfaciendum*, the sheriff shall return that the defendant is not found, the clerk may issue a *fieri facias*, and if upon a *fieri facias*, he shall return that the party hath no goods, or that only part of the debt is levied, in such case it shall be lawful to issue a *capias ad satisfaciendum* upon the same judgment; and where part of a debt shall be levied upon an *elegit*, a new elegit shall issue for the residue; and where *nihil* shall be returned, upon any writ of *elegit*, a *capias ad satisfaciendum* or *fieri facias* may issue, and so *vice versa*; and where one judgment is obtained against several defendants, execution thereon shall issue, as if it were against one defendant, and not otherwise.

Remedy in case of eviction of a tenant in elegit.

SEC. 3. *And be it further enacted*, That if any tenant by *elegit*, be evicted of his title in the lands, tenements, or hereditaments which he holds by virtue of any extent thereof, by judgment had against him otherwise than by his own fraud, or default, before satisfaction shall be made him for his debt, or damages and costs, he shall and may have a writ of *scire facias* against the debtor, his heirs, executors, or administrators, and may thereafter sue out such other writ of execution for the residue of his debt, or damages and costs, as shall appear to remain unpaid, as if no execution had been theretofore issued.

Where lands have been omitted out of the extent, judgments, &c. not to be void.

Not to apply to infants.

SEC. 4. *And be it further enacted*, That when any judgment or recognizance shall be extended, the same shall not be avoided or delayed, by occasion that any part of the lands or tenements extendible, are or shall be omitted out of such extent, saving always to the party and parties whose lands shall be extended, his and their heirs, executors, and assigns, his and their remedy for contribution against such person and persons whose lands are or shall be omitted out of such extent, from time to time: *Provided, nevertheless*, That this act, or any thing therein contained, shall not be construed to give any extent or contribution against any heir or devisee, within the age of twenty-one years, during such minority of such heir or devisee, for or in respect of any lands to such heir or devisee descended or devised, further or otherwise than might have been made before the making of this act.

SEC. 5. *And be it further enacted*, That if any person being

Proceedings in the case of the death of the party in execution.

in prison, charged in execution, shall happen to die in execution, the party or parties at whose suit, or to whom such person shall stand charged in execution for any debt or damages recovered, his or their executors or administrators may, after the death of the person so dying in execution, lawfully sue forth and have new execution against the lands and tenements, goods and chattels, or any of them, of the person so deceased: *Provided always*, That this act shall not extend to give liberty to any person or persons, their executors or administrators, at whose suit any such party shall be, and die in execution, to have or take any new execution against any of the lands, tenements, or hereditaments of such party dying in execution, which shall at any time after the said judgment or judgments be by him sold in *bona fide* for the payment of any of his creditors at whose suit he shall be in execution, and the money paid or secured to be paid to any such creditors, with their privity, in discharge of his or their debts, or some part thereof.

Sec. 6. *And be it further enacted*, That if any person taken in execution, be delivered by privilege of either house of assembly, so soon as such privilege ceaseth, he shall return himself a prisoner in execution, or be liable to an escape.

On a debtor's removal beyond the jurisdiction of the court.

Sec. 7. *And be it further enacted*, That when judgment shall be obtained in any court of record within this territory, for any debt or damages, and the person against whom such judgment shall be obtained, shall remove himself or his effects, or shall reside out of the limits of the jurisdiction of such court, it shall be lawful for the clerk of the court where judgment was given, at the request of the party for whom the same was rendered, to issue a writ of *fieri facias* or *capias ad satisfaciendum*, or any other legal or proper writ of execution or attachment, for the non-performance of a decree in chancery, (as the case may require,) in the form and under the teste herein before prescribed, and to direct the same to the sheriff of any county, or marshal of any corporation within this territory, where the defendant or debtor, or his goods shall be found; which said sheriff or other officer to whom the same shall be directed, is hereby empowered and required to serve and execute the same, and shall make return thereof to the court where the judgment was given, in the manner herein before prescribed and directed.

Goods bound from the delivery of the writ to the sheriff.

Sec. 8. *And be it further enacted*, That no writ of *fieri facias*, or other writ of execution, shall bind the property of the goods, against which such writ is sued forth, but from the time that such writ shall be delivered to the sheriff, under sheriff, coroner, or other officer, to be executed; and for the better manifestation of the said time, such sheriff, coroner, or other officer, his deputy or agent, shall upon the receipt of any such writ, without fee for doing the same, endorse upon the back thereof the day of the month and year when he received the same; and if two or more writs shall be delivered against the same person on the same day; that which was first delivered shall be first satisfied. If any sheriff, coroner, or other officer, to whom any execution shall be delivered, shall fail or neglect to endorse thereon the day of the month and year when he received the same, every such person, for every such failure, shall be liable, on a motion to be made before the court from whence the execution issued, to a penalty not exceeding fifteen per centum, upon the amount of the said execution, if it be for money, and if it be for a specific thing, one hundred dollars, to the use of the party injured, upon giving ten days previous notice of such motion; and shall moreover be liable to the action of the party grieved for all damages arising from such failure.

Notice of sale.

[* SEC. 9. *And be it further enacted*, That on all executions which have heretofore issued, or shall hereafter be issued, the sheriff or other officer, having published notice of the time and place of sale at the door of the court-house of his county, on some court day, and at some public place, near the residence of the debtor, at least ten days before such sale; shall proceed to sell by auction the goods or chattels so taken, or so much thereof as shall be sufficient to satisfy the judgment or decree, for the best price that can be got for the same: *Provided always*, that if the owner of such goods and chattels shall give sufficient security to such sheriff, or officer, to have the same goods and chattels forthcoming at the day of sale, it shall be lawful for the sheriff or officer, to take a bond from such debtor and securities, payable to the creditor, reciting the service of such execution, and the amount of the money due thereon, and with condition to have the goods or chattels forthcoming at the day of the sale appointed by such sheriff, or officer, and shall thereupon suffer the said goods and chattels to remain in the possession, and at the risk of the debtor, until that time; and if the owner of such goods and chattels shall fail to deliver up the same, according to the condition of the bond, or pay the money mentioned in the execution, such sheriff or officer shall return the bond to the office of the clerk of the court from whence the execution issued, to be there safely kept, and to have the force of a judgment; and thereupon, it shall be lawful for the court where such bond shall be lodged, upon motion of the person to whom the same is payable, his executors or administrators, to award execution for the money therein mentioned, with interest thereon, from the date of the bond until payment and costs; provided the obligors, their executors or administrators, or such of them against whom execution is awarded, have ten days previous notice of such motion; and upon such execution, the sheriff or officer shall not take any security, either to have the goods forthcoming at the day of sale, or for the payment of the money at a future day, but shall levy the same immediately, and keep in his hands the goods and chattels taken thereon, until he shall have sold sufficient thereof to raise the money mentioned in the execution, or the same be otherwise satisfied; and for the better direction of such officer, the clerk shall endorse upon any such execution, "that no security of any kind is to be taken."]

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* This section (which follows a similar provision in the Law of Virginia of 1769—and in the Kentucky Act of 1796,) has been repealed: but it was deemed necessary to retain it in order to render intelligible the 27th Sec. of this act.

[SEC. 10. Inflicts a penalty on the sheriff for not returning to the clerk's office. This and the ninth section were repealed by an act passed December 23, 1809, entitled "An Act to prevent the Sacrifice of Property," the object of which is for the most part temporary, on which account it is not inserted in this Digest. The repealing clause above alluded to, is in the following words.

SEC. 7. *And be it further enacted,* That the ninth and tenth sections of the act, entitled "An Act concerning Executions and for the Relief of Insolvent Debtors," passed the 7th day of February, 1807, and all other parts of acts which authorize the taking of forthcoming bonds be, and the same are hereby repealed.

But see the act of 1814, chapter 9 of this title, section 17.]

Execution against sheriffs, &c. for money received by them.

SEC. 11. *And be it further enacted,* That when an execution shall issue against the estate of any sheriff, under sheriff, marshal of a corporation, coroner, or constable, or their securities, or their heirs, executors, or administrators, or either of them, upon a judgment obtained against such sheriff, under sheriff, marshal of a corporation, coroner, or constable, or securities, or the heirs, executors, or administrators, or either of them, for money recovered by such sheriff, under sheriff, marshal of a corporation, coroner, or constable, by virtue of any execution or process levied or executed by him or them, or for any money collected or received by them, in any manner, as sheriff, under sheriff, marshals, coroners, or constables, no security for the payment of the money mentioned in such execution, at a future day, or to have the goods forthcoming at the day of sale, shall be taken or received, but the officer taking such estate in execution, shall proceed immediately to the sale thereof, notwithstanding such security be tendered, and for the better direction of such officer, the clerk issuing such execution shall endorse thereon, "That no security of any kind is to be taken."

Slaves not to be taken, if other property can be had.

SEC. 12. *And be it further enacted,* That no sheriff, or other officer, to whom any writ of *fieri facias* shall be directed, shall take in execution any slave or slaves, unless the debt and cost mentioned in such *fieri facias*, shall amount to the sum of one hundred dollars; *Provided,* There be shown to such sheriff or officer, by the defendant or any other person, sufficient other goods and chattels, of such defendant's, within the county of such sheriff or officer, upon which he may levy the debt and costs mentioned in such *fieri facias.*

Names of slaves sold, to be certified.

SEC. 13. *And be it further enacted,* That where any slave or slaves shall be taken in execution, and sold, the names of such slaves shall be certified on the back of such execution, and returned to, and recorded among the records of the court where such execution shall issue.

In case goods remain unsold, a venditioni exponas may issue.

SEC. 14. *And be it further enacted,* That if the goods taken by any sheriff, or other officer, or any part thereof, shall remain in his hands unsold, he shall make return accordingly; and thereupon the clerk of the court from whence the execution issued, shall and may, and he is hereby required, to issue a *venditioni exponas* to such sheriff, or other officer directed, whereupon the like proceedings shall be had as might and ought to have been had on the first execution; which writ of *venditioni exponas* shall be in the following form:

Form.

"The Mississippi Territory of the United States, &c., greeting: We command you, that you expose to sale those goods and chattels of A. B. to the value of , which, according to our command, you have taken, and which remain in your hands unsold, as you have certified to our judges (or justices) of our court, to satisfy C. D. the sum of , whereof in our said court he hath recovered execution against the said A. B. by virtue of a judgment in the said court, and that you have," &c.

Sheriff to provide for slaves, &c. taken in execution.

Sec. 15. *And be it further enacted*, That when any sheriff, or other officer, shall serve any writ of execution on slaves, horses, or other live stock, and the same shall not be immediately restored to the debtor, on his executing a forthcoming bond as aforesaid, it shall and may be lawful for such officers, and they are hereby required to provide sufficient sustenance for the support of such slaves or live stock, until such slaves or stock be sold, or otherwise legally discharged from such execution: and upon the return of any execution, the court may and shall, upon the motion of the officer serving the same, settle and adjust what such officer shall be allowed for his expenses incurred by supporting such slaves or stock; and the said officer shall and may be allowed to retain the same out of the money arising from the sale of the said slaves or stock.

Doubtful property levied on.

Sec. 16. *And be it further enacted*, That if any sheriff shall levy an execution on property, and a doubt shall arise whether the right of such property is in the debtor or not, such sheriff may apply to the plaintiff, his attorney or agent, for his bond, with good security, for indemnification for the sale of the property seized, which, if the plaintiff, his attorney or agent, refuses or fails to do, within ten days after such application, the sheriff or other officer shall be justified in delivering up such property to the party from whose possession the property was taken.

Forthcoming bond.

[Sec. 17. *And be it further enacted*, That where any forthcoming bond shall be assigned, and execution issued thereon against the original obligor or obligors, and on such execution there shall be a return by the sheriff or other officer, that there were no goods, or not sufficient goods of the obligor or obligors, to make the debt and costs, it shall be lawful for the clerk who issued such execution, to issue a second execution against the assignor or assignors of such bond, for the debt mentioned therein, or such part thereof as shall appear to be still due, on which execution there shall be similar proceedings to those on an execution against the original obligors.]

A debtor may release his body, by delivering property.

Sec. 18. *And be it further enacted*, That when any writ of *capias ad satisfaciendum* has been, or shall be levied on any debtor, it shall be lawful for such debtor to tender to the sheriff or other officer, serving the same, slaves or personal property to the value of the debt and costs, for which such execution has issued, or may hereafter issue, which property the said sheriff or other officer shall receive and proceed to sell in like manner, as is herein directed, in the case of goods taken in execution upon a writ of *fieri facias*, and shall thereupon discharge such debtor out of custody: *Provided always*, That if such property so tendered, shall not be sufficient to satisfy the debt or damages and costs, or shall be under any lien or incumbrance, so as that the whole cannot be sold, a new *capias ad satisfaciendum* or *fieri facias*, at the option of the plaintiff, shall issue for any balance: and the clerk of the court from which such execution originally issued, shall, upon the return of the sheriff of the insufficiency or incumbrance aforesaid, issue a new *capias ad satisfaciendum* or *fieri facias*, if required: but where such property shall have been under any incumbrance, the debtor shall not be at liberty to tender slaves or personal estate, on a second *capias ad satisfaciendum* being served, or in case of a *fieri facias* issued in consequence of such return, to avail himself of the privileges of this act.

Not to extend to cases of distress for rent.

SEC. 19. *And be it further enacted*, That nothing in this act contained shall be construed to extend to any proceedings that may be had in consequence of any distress made, or to be made, for any rent reserved and due, or which may hereafter become due, upon any demise, lease, or contract whatsoever.

Where, on a sale, the amount shall exceed the debt; the surplus shall be paid the debtor.

SEC. 20. *And be it further enacted*, That wheresoever, on a sale made under any execution, the amount of such sale shall exceed the principal, interest, and costs, the sheriff or other officer shall pay such excess or surplus to the debtor, his executors, administrators, or agent; and if any sheriff or other officer shall fail or refuse to pay such surplus or excess, when required, such sheriff or other officer, his or their security or securities, his or their executors or administrators, shall, each and every of them, be liable to the like penalty and judgment in favour of the said debtor, as is prescribed and directed by law, in favour of the plaintiff against the sheriff, for not paying the principal, interest, and costs, levied on an execution.

Where an injunction is obtained, the money shall be returned to the debtor.

SEC. 21. *And be it further enacted*, That when any sheriff or other officer, under any execution, shall receive the whole or any part of the money for which the said execution was issued, and the person against whom such execution may have issued, his executors or administrators shall obtain an injunction to such execution, or any part of the money mentioned therein, before the money received by such sheriff or other officer is paid to the plaintiff, his agent or attorney, or his executors or administrators: in every such case, the sheriff or other officer, his executors or administrators, shall repay the person or persons against whom such execution issued, his or their executors, administrators, or agent, the money so received, or such part thereof as may be enjoined to the person having a right to demand the same; such sheriff or other officer, and their securities, his and their executors and admininistrators, and every of them, shall be liable to the like penalty and judgment in favour of the person, his executors or administrators, by whom the said injunction is obtained, as is directed by law in favour of the plaintiff against the sheriff, for not paying money levied on an execution.

Bonds may be taken to keep the prison rules.

SEC. 22. *And be it further enacted*, That if any person or persons, taken or charged in execution, shall enter into bond with good and sufficient securities, under a reasonable penalty, upon condition that he or they shall not depart or go out of the rules or bounds of the prison to which he or they shall be committed, it shall be lawful for the sheriff, in whose custody such prisoner shall be, to permit him or them to go out of the prison and return at their pleasure.

How insolvent debtors may be discharged from confinement.

SEC. 23. And for the relief of insolvent debtors, who shall be taken in execution, and to prevent the long imprisonment of unfortunate people, which can be of no benefit, but rather a disadvantage to their creditors : *Be it further enacted*, That if any person that now is, or shall hereafter be taken, or charged in execution in any suit, commenced or prosecuted in any court of record within this territory, it shall be lawful for any judge or justice of the said court, or of the court of that county or corporation to whose jail such person shall be committed, by warrant under his hand and seal, to command the jailer or keeper of the said prisoner, to bring before the said court, if sitting, or if not sitting, in case it be a superior court, before any one judge of the said court, at a certain time and place therein to be appointed, and if an inferior court, before any two justices of said court, at their county court-house, likewise on a certain day to be appointed in such warrant, the body or bodies of such person or persons so in prison as aforesaid, together with a list of the several executions with which he or she shall stand charged in the said jail, which warrant such jailer is hereby required to obey; and ten days notice thereof shall be given to the party or parties, or their executors, administrators, or agents, at whose suits such prisoner or prisoners shall be in execution; and every such prisoner coming before the said court, judge, or justices, as the case shall be, shall subscribe and deliver in a schedule of his whole estate, and make oath and swear to the effect following, that is to say : "I, A. B. do, in the presence of Almighty God, solemnly swear (or affirm, as the case may be) that the schedule now delivered and by me subscribed, doth contain, to the best of my knowledge and remembrance, a full, just, true, and perfect account and discovery of all the estate, goods, and effects, to me in any ways belonging, and such debts as are to me owing, or to any person in trust for me, and of all securities and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me, or to my use, or to any other person or persons, in trust for me ; and that I, or any other person or persons, in trust for me, have not land, money, stock, or any other estate, real or personal, in possession, reversion or remainder, of the value of the debt or debts with which I am charged in execution; and that I have not directly or indirectly sold, lessened, or otherwise disposed of, in trust, or concealed all or any part of my lands, money, goods, stock, debts, securities, contracts, or estate, whereby to secure the same, or to receive or expect any profit or advantage therefrom, or to defraud or deceive any creditor or creditors to whom I am indebted, in any wise howsoever: So help me God." Which schedule beingso subscribed in open court, if taken in court, and if not, in the presence of one judge or two justices, shall be returned to the clerk of the court, there to remain for the better information of the creditor; and after delivering in such schedule, and taking such oath, such prisoner shall be discharged by warrant from such court, or from one judge or two justices (as the case may be) which warrant shall be sufficient to indemnify such sheriff or officer against any escape or escapes, action or actions, whatsoever, which shall or may be brought or prosecuted against him or them, by reason thereof; and if any action should be commenced against any sheriff or officer, for performing his duty in pursuance of this act, he may plead the general issue, and give this act in evidence: *Provided always*, That notwithstanding such discharge, it shall be lawful for any creditor or creditors, by judgment, at any time afterward, to sue out a writ of *fieri facias*, to have an execution against any lands or tenements, goods or chattels, which such insolvent person shall thereafter acquire, or be possessed of: but no person, delivering in such schedule, and having taken the said oath, shall again be imprisoned on account of any judgment which shall have been obtained against him, previous to the time of taking such oath, unless by virtue of a *capias ad satisfaciendum*, directed to issue by the court in which the said judgment shall have been rendered: *And provided also*, That any person confined within the limits of any prison bounds, shall be entitled to the benefit of this act, in the same manner, and under the same regulations, as those confined in jail, and all bonds given for the keeping of the said prison bounds, shall be null and void, after such prisoner shall be so discharged.

Sheriff to sell property.

Sec. 24. *And be it further enacted*, That all the estate which shall be containedin such schedule, and any other estate which may be discovered to belong to the prisoner, for such interest therein as such prisoner hath and may lawfully depart withal, shall be vested in the sheriff of the county, wherein such lands, tenements, goods or chattels, shall lie or be found, and such sheriff is hereby authorized, empowered, and required, within sixty days after the taking of the said oath, ten days previous notice of the time and place of sale being given, to sell and convey the same to any person or persons whatsoever, for the best price that can be got for the same; and the money arising from such sale, shall be by such sheriff or officer paid to the creditor or creditors, at whose suit such prisoner or prisoners shall be imprisoned, saving to every such prisoner, his or her necessary apparel, utensils of trade, and arms for the defence of himself and his country; and if any sheriff or other officer, shall fail to pay the money arising from such sale according to law, he shall be liable to the same penalty, to be recovered in the same manner and by the same persons, as if the said money had been levied by a *fieri facias*.

Property in possession of another, how recoverable.

SEC. 25. *And be it further enacted*, That when any insolvent debtor shall be discharged pursuant to this act, and the schedule subscribed and delivered in by such prisoner, shall contain money due to such prisoner, or of goods, chattels, or estates, belonging to him, and in the possession of another, in that case the clerk of the court, with whom such schedule is directed to remain, shall immediately issue a summons against each of the persons named as debtors in the said schedule, and against such others as are therein said to have possession of any goods, chattels, or estates, of the property of the prisoner, reciting the sum of money he or she is charged with, or the particular goods, chattels, or estates, said to be in his possession, and requiring him or her to appear at the next court, and declare on oath, whether the said money, or any part thereof, be really due to such prisoner, and whether such goods, chattels, or estate, be really in his or her possession, and are the property of such prisoner; and if the person so summoned shall fail to attend according to such summons, or to show good cause for his non-attendance, it shall be lawful for the court to enter judgment against every such person for the money, goods, chattels, or estates in such schedule mentioned, together with costs of suit, a lawyer's fee excepted, and if any such person so summoned shall appear and be sworn, judgment shall be entered for so much of the money, goods, or chattels, or estates, as he or she shall acknowledge to be due, or to be of the property of such prisoner, and in his possession, with costs as aforesaid, which judgment shall be entered in the name of the sheriff, who may thereupon proceed to levy the execution, as in other cases, and to dispose of the money, goods, chattels, or estates, so recovered, in the same manner as the estate contained in the schedule is hereby directed to be disposed of: *Provided always*, That where any such garnishee shall not acknowledge the whole money to be due, or all the goods, chattels, or estates, mentioned in the schedule to be the property of the prisoner, and in his possession, the sheriff, or such prisoner, at any time after, unless barred by any of the acts limiting the time for the commencement of actions, shall be at liberty to claim the residue by legal process, and the former judgment as to such garnishee shall be no further bar in such process than for so much money, or such goods, chattels, and estates, as the garnishee is thereby ordered to pay or deliver.

Allowance to the sheriff, what, and how paid.

SEC. 26. *And be it further enacted*, That every sheriff shall be allowed to retain out of the effects of such insolvent debtor, before the distribution thereof, all reasonable expenses in recovering such money, goods, chattels, and estates as aforesaid, including such a fee to a lawyer for the proceeding against the garnishee, as shall be judged reasonable by the court; and if such effects be not sufficient, he shall be reimbursed such expenses by the creditor, or creditors, if more than one, in proportion to their demands.

Fees for keeping insolvent debtors, how paid.

SEC. 27. *And be it further enacted*, That where such insolvent person shall not be able to satisfy or pay his ordinary prison fees, the sheriff or jailer may demand and receive of the party or parties at whose suit such insolvent person shall be imprisoned, all such fees as shall become due, until such creditor shall agree to release such prisoner; and if the creditor, upon notice given to him or her, his or her attorney or agent, shall refuse to give security to the sheriff or jailer, for the payment of such prison fees, or shall fail to pay the same when demanded, such sheriff or jailer shall discharge such debtor out of the prison: *Provided nevertheless*, That such insolvent prisoner shall be afterward liable to the action of the creditor to recover such fees; and such creditor shall and may, notwithstanding his consent to the releasing such prisoner, at any time afterward sue out a *scire facias* to have a new execution against the lands and tenements, goods and chattels of such prisoner, in case he or she shall afterward become possessed of any.

Debtor not allowed double rations.

SEC. 28. *And be it further enacted*, That when any debtor is in custody on several executions, it shall not be lawful for such debtor to demand any more or other diet than if he was in custody on one execution only, nor shall any sheriff or jailer demand or receive more than the rate fixed by law, in case of a debtor confined on one execution only, which shall be paid by the creditor at whose suit such debtor was first taken.

SEC. 29. *And be it further enacted*, That if a *destringas* issue in detinue, the court, for good cause shown, may direct it to be superseded, so far as it relates to the specific thing, and to be executed ~~for~~ the alternative price or value only, if fixed in the judgment, or if the same shall afterward be fixed by a writ of inquiry.

Forthcoming bond.

SEC. 30. *And be it further enacted*, That if a forthcoming bond be quashed as faulty, the sheriff taking the same shall be at all times liable for damages to the party injured, or his representatives.

Judgment against sheriff, &c. on failing to return an execution.

SEC. 31. *And whereas* doubts have arisen in what manner judgment should be rendered against any sheriff, coroner, or marshal of a corporation, who shall fail to return an execution to the office from whence it issued, on or before the return day thereof:

Be it further enacted, That when any writ of execution or attachment for not performing a decree in chancery, shall come into the possession of any sheriff, coroner, or marshal of a corporation, and he shall fail to return the same to the office from whence it issued, on or before the return day thereof, it shall be lawful for the court, ten days previous notice being given, upon motion of the party injured, to fine such sheriff, coroner, or marshal of a corporation, in any sum not exceeding five dollars per month for every hundred dollars contained in the judgment or decree on which the execution or attachment so by him detained was founded, and so in proportion for any greater or lesser sum, counting the aforesaid months from the return day of the execution or attachment, to the day of rendering judgment for the said fine.

Proceeding against them for failing to pay money received on executions.

SEC. 32. *And be it further enacted*, That if any sheriff or other officer shall make return on any writ of *fieri facias*, or *venditioni exponas*, that he hath levied the debt, damages, or costs, as in such writ is required, or any part thereof, and shall not immediately pay the same to the party to whom the same is payable, or to his attorney, or shall return upon any writ of *capias ad satisfaciendum*, or attachment for not performing a decree in chancery, for payment of any sum of money (that he hath taken the body or bodies of the defendant or defendants, and hath the same ready to satisfy the money in such writ mentioned) and shall have actually received such money of the defendant or defendants, or have suffered him, her, or them to escape with the consent of such sheriff, under sheriff, or officer, and shall not immediately pay such money to the party to whom the same is payable, or his attorney, then, and in either of the said cases, it shall and may be lawful for the creditor at whose suit such writ of *fieri facias*, or *venditioni exponas*, *capias ad satisfaciendum*, or attachment shall issue, upon a motion made at the next succeeding court from whence such writ shall issue, to demand judgment against such sheriff, officer, or under sheriff, or securities of such under sheriff, for the money mentioned in such writ, or so much as shall be returned levied on such writs of *fieri facias*, or *venditioni exponas*, with interest thereon, at the rate of fifteen per centum per annum, from the return day of the execution until the judgment shall be discharged; and such court is hereby authorized and required to give judgment accordingly, and to award execution thereon: *Provided*, such sheriff or officer have ten days previous notice of such motion.

Creditor to appoint agent if he does not reside in the county.

SEC. 33. *And whereas* it is unreasonable that sheriffs should be obliged to go out of their counties to give notice to creditors at whose suit any person may be in the custody of such sheriff, or to pay money levied by execution: *Be it therefore enacted*, That where any execution shall be delivered to the sheriff of any other county than that where any creditor resides, such creditor shall name some person in the county where the execution is to be levied, to be his, her, or their agent, for the particular purpose of receiving the money on such execution, and for giving to and receiving from the sheriff any notices which may be necessary, relating thereto, and payment made, and notices given to such agents, shall be as effectual as if made or given to the creditor, and if any creditor shall fail to appoint such agent, no judgment shall be entered against the sheriff for non-payment of the money mentioned in such executions unless a demand thereof shall have been first made of such sheriff, in his county, by the creditor or some other person having a written order from him; nor in case of failure in appointing such agent, shall the sheriff or prisoner be obliged to give notice previous to the discharge of such prisoner, either for want of security for his prison fees, or upon his taking the oath of an insolvent debtor; but such prisoner shall be discharged in those cases, respectively, without any notice to be given to the creditor so failing.

Proceedings after final decree in chancery.

SEC. 34. *And be it further enacted*, That after obtaining a final decree for lands, slaves, or money, or things of a specific nature, in any court having chancery jurisdiction, the clerk of such court shall, upon the request of the party obtaining such decree, issue any writ of execution, either a *fieri facias, capias ad satisfaciendum, habere facias possessionem*, or any judicial process which may now issue from any court of common law, according to the nature of the case, for carrying the said decree into effect; which writ shall issue in the name of the Mississippi Territory of the United States, and bear teste and be signed by the clerk of the court, and all process so issued shall be executed and returned to the clerk's office, from which the same issued, from term to term, on the return day thereof, by the officer or officers to whom the same shall be directed, and shall have the same operation, and possess the same force, to all intents and purposes, as similar process issued upon judgments at common law, the officer or officers to whom any such process is directed, shall be subject to the like penalties, for misconduct or neglect, and the court shall exercise in this and in all cases relating to such process, the same powers as if the said process had issued upon a judgment obtained at common law: but nothing herein contained shall prohibit any person from proceeding to carry any order or decree in chancery into execution, in any manner in which he might avail himself before the passing of this act.

Leased property, how taken.

SEC. 35. *And be it further enacted*, That no goods or chattels whatsoever, lying or being in, or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years or will, or otherwise, shall at any time hereafter be liable to be taken by virtue of any writ of execution on any pretence whatsoever, unless the party so taking the same, shall, before the removal of the goods from off such premises, pay or tender to the landlord or lessor thereof, or his agent, all money due for the rent of the said premises at the time of taking such goods, or chattels in execution: *Provided nevertheless*, That such rent arrears do not amount to more than one year's rent, and if more be due, then the party suing out such execution, paying or tendering to such landlord, or his agent, one year's rent, may proceed to execute his judgment, and the sheriff or officer levying the same, is hereby empowered and required to levy and pay to the plaintiff, as well the money so paid for the rent as the execution money.

Under what restrictions execution to issue.

SEC. 36. *And be it further enacted*, That no writ of execution shall issue against lands and tenements, unless in the case of an attachment against an absconding debtor, and executions issued in favour of the territory, except the writ of *elegit*, which shall in no case issue where the defendant or defendants, their executors or administrators, have sufficient goods and chattels to satisfy any judgment or decree which may be rendered against him, her, or them.*

Breach of prison rules.

Sec. 37. *And be it further enacted*, That if any person taken in execution under a *capias ad satisfaciendum*, shall commit a breach of the condition of any bond given for the prison rules or bounds, the same proceedings shall be had thereon as is herein before directed in the case of the forfeiture of a forthcoming bond.†

On elegit, the debtor may say which shall be taken.

Sec. 38. *And be it further enacted*, That in all cases where the writ of elegit shall be sued out, that the defendant or defendants shall have the election of the moiety of his, her, or their lands to be extended.

Repealing clause.

Sec. 39. *And be it further enacted*, That the act, entitled "An Act concerning Executions," passed the 16th July, 1805, the act entitled "An Act for the Relief of Creditors, by making composition with their Debtors, in case two-thirds in number and value agree," and the fifth section of the act, entitled "An Act for the well regulation of Jails, and for the Relief of Insolvent Debtors," and all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER II.

* An Act concerning Executions.—*Passed February* 10, 1807.

Whereas divers persons residing in other states, governments, or dominions, possessed of lands, tenements, and hereditaments in this territory, may have contracted or may contract debts with the inhabitants of this territory, without having personal estate in the same, to satisfy such debts and damages;

Sec. 1. *Be it therefore enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That all process which heretofore issued against goods and chattels, shall hereafter issue against lands and tenements, in the same manner as against goods and chattels in the case of foreigners and non-residents; and the sheriff, upon such attachment, execution, or other process, shall proceed to levy the same upon the goods and chattels of the defendant, in the first instance, if any there be; but if to the best of his knowledge, there be no such goods and chattels, or not sufficient to answer the plaintiff's demand, he shall execute the same upon the lands and tenements of such non-resident, to the amount of the whole debt; or of so much as may remain more than the value of the goods and chattels so found; and such lands and tenements shall be liable, under the restrictions aforesaid, to be sold to satisfy the judgment of the plaintiff; and he shall sell the same at the most public place in his county, after his having given at least forty days notice, by advertisement in the public gazettes, before the day of sale.

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* See under this title, chapter 5, section 9.

† This section has never been directly repealed: but it is probably superseded, in part at least, by the act of 1809, "respecting Prison Bound Bonds." See chapter 3 of this title.

CHAPTER III.

An Act to amend the several Laws now in force respecting Prison Bound Bonds.—*Passed December 7, 1809.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That all and every bond or bonds, which shall hereafter be given in pursuance of the law directing the manner of taking prison bound bonds, by any person or persons committed on a *capias ad satisfaciendum* shall, by the sheriff taking the same, be returned to the office of the clerk from whence such execution issued, to be safely kept by such clerk, and if any person shall obtain the rule of any prison, upon giving bond and security as the law directs, and shall escape out of the same, before he shall have paid the debt, or damages and costs, according to the condition of said bond, upon due proof thereof, it shall be lawful, and full power and authority are hereby given to the court where such bond is lodged, upon motion of the party for whom such execution issued, to grant judgment, and award execution against such person and his securities, executors, or administrators, for the debt or damages, and costs, with six per cent. interest, to be computed from the debt of such bond until payment: *Provided*, That if any fact should arise requiring to be tried by a jury, the court shall have power and authority, and they are hereby required to cause a jury to be empannelled and sworn to try the same; and if the regular jury attending such court shall be discharged, that then and in that case, the court shall cause a jury of qualified bystanders to be summoned for the trial thereof: *Provided always*, That the obligors, their executors or administrators, or such of them as it is intended to have judgment entered up against, shall have notice in writing, at least ten days previously to the time of making such motion.

SEC. 2. *And be it further enacted*, That no person or persons who shall be committed on any such execution, shall be allowed the rules of any prison, but shall be kept in safe custody in prison, until the whole debt, or damages with costs and interest, shall be fully paid, or until they shall be otherwise discharged by law.

SEC. 3. *And be it further enacted*, That all laws which come within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER IV.

Extract from an Act, entitled "An Act regulating Judicial Proceedings in certain cases, and for other purposes."—*Passed December* 18, 1811.

Insolvent debtors.

SEC. 27. *And be it further enacted*, That where any person now is, or hereafter may be in custody, upon original or mesne process, such person shall be entitled to the benefit of the provisions of the act, entitled "An Act concerning Executions, and for the Relief of Insolvent Debtors," in the same manner as is therein provided for persons charged in execution: *Provided nevertheless*, That no plaintiff in any suit against any person, who may have availed himself or herself of the provisions of the aforesaid act, and who shall not have obtained final judgment against such defendant, taking the benefit of the aforesaid act, shall receive any part of the proceeds of the estate of such prisoner, in the distribution thereof, to the prejudice of any person who may have charged the same prisoner in custody upon execution.

NOTE.—The body of this Act will be found under the title "Judicial Proceedings."

CHAPTER V.

An Act regulating the Mode of collecting Money by Execution.—*Passed December* 23, 1812.

NOTE.—The first three sections of this Act relate to the valuation of property taken in execution, and provide that in case it will not sell at three-fourths of its value, it might be replevied on bond and security being given for the payment of one half of the debt by the first of March, 1814, and the other half by the first of March, 1815. They also contain some other regulations of a like temporary nature.

Duty of officers serving executions, &c.

SEC. 4. *And be it further enacted*, That it shall be the duty of every officer serving any execution on goods and chattels, if the person whose property is levied on, or who may have delivered up property in discharge of his body, will give bond to the creditor or creditors, with good and sufficient security, in the penalty of double the amount due by such execution, including all costs, conditioned for the forthcoming and delivery of the same property to the proper officer, on the day and at the place appointed for the sale of the same, by twelve o'clock, (noon,) to suffer the property to remain in the possession of, and at the risk of the debtor or debtors; and if the condition of any such bond shall not be complied with, the proper officer shall return such bond, together with the execution, to the clerk's office, or justice of the peace, as the case may be, and that the bond was forfeited; and every forthcoming bond which shall be forfeited, shall have the force and effect of a judgment; and the clerk of the court, or justice of the peace, as the case may be, shall immediately upon the return of every such bond "forfeited," issue execution thereon against all the obligors therein, and on any such execution no security of any kind shall be taken; and the clerk, or justice of the peace, as the case may be, issuing the same, shall endorse thereon the same, and the officer to whom the same may be directed shall act accordingly.

Officer's fees.

SEC. 5. *And be it further enacted*, That every officer taking any bond under this act, shall be entitled to seventy-five cents for taking the same, but shall not be entitled to any commissions on any execution, unless the money be made, or property actually sold.

Where the sheriff is to sell property.

SEC. 6. *And be it further enacted*, That hereafter the sheriff or coroner of each and every county shall sell all property which shall be sold by virtue of any execution, at the court-house of the proper county, if the property can conveniently be removed there, otherwise at some other convenient place; and every constable shall sell all property which he may sell by virtue of any execution, at or near the residence of the debtor, and in all cases the proper officer shall give at least ten days previous notice of the time and place of sale, by advertisement set up near the residence of the debtor, and in cases of sales made by a sheriff or coroner, at the court-house of the proper county.

Persons exempted from the provisions of this act.

SEC. 7. *And be it further enacted*, That the provisions* of this act shall not extend to lawyers, sheriffs, coroners, constables, clerks of courts, justices of the peace, tax collectors, or any other officer or officers, for any money received for their clients, or in their official characters, nor to ginners of cotton, for any cotton received in his, her, or their gin, to be ginned, nor to any person or persons whose security or securities shall have paid money by virtue of any judgment or execution had or obtained against him, her, or them; but the same proceedings shall be had on all executions coming within the purview of this section of this act, as if this act had never passed, and for the direction of any officer to whom any such execution may be directed, the clerk or justice of the peace, as the case may be, issuing the same, shall endorse thereon, "no security of any kind is to be taken," and the officer to whom the same may be directed, shall govern himself accordingly: *Provided also*, That this act, nor no parts thereof, shall extend to any execution which may be issued, or any judgment obtained for any debt contracted after the 18th day of July last, and every clerk or justice of the peace, as the case may be, issuing any such execution, shall endorse thereon that "no security of any kind is to be taken," and every officer to whom any such execution may be directed shall govern himself accordingly.

Former obligations to be valid.

SEC. 8. *And be it further enacted*, That nothing in this act contained shall be so construed to make void any obligation entered into under an act for the relief of debtors, passed the 18th day of December, one thousand eight hundred and eleven, but in case any security to any such obligation shall wish to have collateral security of his principal in consequence of the delay in payment provided for by this act, he shall have a right to demand the same, and in case of the principal failing to give such collateral security within ten days after notice thereof, to be approved of by the clerk of the proper court, or justice of the peace, the said security shall have power to take out execution on the said bond taken under the aforesaid act, in favour of the plaintiff in such action, and require the sheriff of the proper county to execute the same according to law.

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* See the note as to the provisions of the three first sections at the beginning of this act.

Lands, &c. subject to the payment of judgments.

Sec. 9. *And be it further enacted*, That hereafter lands, tenements, and hereditaments, shall be subject to the payment of all judgments or decrees of any court of record within this territory, and the clerk of such court shall frame the execution accordingly, and in all cases the sheriff or other officer levying such execution on real estate, shall give at least thirty days notice of the time of such sale; and the sale shall be at the court-house of the county in which such land may lie: *Provided*, That courts holden by justices of the peace, shall not be deemed courts of record within the meaning and provisions of this act, and the sheriff or other officer selling any real estate, shall make a title to the purchaser, which title shall vest in the purchaser all the right, title, and interest, which the defendant had in and to such real estate, either in law or equity.

Duty of sheriffs.

Sec. 10. *And be it further enacted*, That it shall be the duty of every sheriff, if he has levied any execution on property, and advertised the same agreeably to law, if the debtor or debtors shall, on the day of sale, and before the property levied upon shall have been valued, produce to the sheriff other property in lieu thereof, such sheriff shall cause the property so produced to be valued, and to offer the same for sale in the manner as if it had been originally levied upon.

Sec. 11. *And be it further enacted*, That nothing in this act contained, shall be so construed as to extend to executions founded on the act, commonly called the Forthcoming Bond Law, nor to executions founded on bonds taken under the act, entitled "An Act to prevent the Sacrifice of Property."

CHAPTER VI.

An Act to prevent Frauds in certain cases, and for other purposes.—*Passed December* 24, 1812.

How to proceed in case of fraudulent conveyance of property.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That from and after the passing of this act, when the sheriff of any county in this territory shall return on any execution, "That there is no property to be found in his county belonging to the defendant," and it shall be suggested by the plaintiff, that the defendant has property in his own right, but hath fraudulently conveyed the same for the purpose of defrauding his creditors, or to avoid the payment of the execution, notice in the nature of a *scire facias* shall be directed by the court to issue to the person or persons in whose hands such property is supposed to be, or having such fraudulent conveyance, and on the return of the *scire facias*, being executed, as in other cases, an issue shall be made up, and tried by a jury, and if the jury shall find the conveyance to be fraudulent, or without valuable consideration, the property thus fraudulently conveyed or made over, shall be subject to the plaintiff's execution, in the hands of the defendant, or the person or persons thus notified.

Court to order an issue.

SEC. 2. *And be it further enacted*, That when any garnishee shall be summoned into court, and on his or her garnishment, deny that he or she owes to, or has any of the defendant's property in his or her hands, and the plaintiff in such attachment shall on oath state his belief that such garnishee does owe to, or has property in his hands belonging to the defendant, the court shall order an issue to be made up, which shall be tried by a jury, and the court shall give judgment on their verdict as in other cases.

CHAPTER VII.

Extracts from "an Act, making further Regulations in Judicial Proceedings."—*Passed December* 24, 1812. The former part of which will be found under the title "Judicial Proceedings," Chapter 12.

Oath to be made to executed property.

SEC. 7. *And be it further enacted*, That where any sheriff shall levy execution on property claimed by any person, not a party to such execution, such person may make oath to such property, and it shall thereupon be the duty of the sheriff to postpone the sale or further execution of the judgment until the next term of the superior court of the county in which such execution is so levied, and such court shall require the parties concerned, to make up an issue under such rules as they may adopt, so as to try the right of property before a jury at the same term, unless special cause be shown to induce the court to continue the same for one term, and no longer, and the sheriff shall make return on said execution accordingly: *Provided*, that the person claiming such property, or his attorney, shall give bond to the sheriff with security in a sum equal to the amount of the execution, conditioned to pay the plaintiff all damages which the jury on the trial of the right of property may assess against him in case it should appear that such claim was made for the purpose of delay, and the jury shall have power to give such damages, not less than ten per cent., as may seem reasonable and just to the plaintiff, against the claimant: in case it shall be sufficiently shown that such claim was intended for delay only, and it shall be lawful for such jury to give verdict in manner aforesaid, by virtue whereof judgment may be entered up, and execution issued against such claimant: *And provided also*, That the burthen of the proof shall be upon the plaintiff in the execution, and it shall be the duty of the sheriff to return the property levied upon, to the person out of whose possession the same was taken, upon such person entering into bond, with security to the plaintiff in execution in double the amount of the debt and costs, conditioned for the delivery of the property to the sheriff whenever the claim of the property so taken shall be determined by the court, and if any person to whom property is so returned shall neglect, or refuse to deliver the property to the sheriff, it shall be the duty of the sheriff forthwith to return the bond to the clerk's office of the superior court, which bond shall have the force and effect of a judgment, and execution may be awarded by the court against all or any of the obligors on having ten days notice thereof.*

CHAPTER VIII.

An Act for the Relief of Securities in certain cases.—*Passed December* 1, 1814.

Collateral security authorized to be required in case of removal or supposed removal of principals.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That in case the security to any replevy bond which hath heretofore, or may be hereafter taken, shall become dissatisfied in consequence of the principal to said bond being about to remove out of the territory, or shall be about to remove his or her property out of the county, or be wasting the same, such security, his agent or attorney, making oath thereof before any justice of the county in which the principal to said bond resides, shall have a right to demand collateral security, and in case the principal shall fail to give the same, within five days after notice of such oath having been made, to be approved of by the clerk of the proper court or justice of the quorum or of the peace, as the case may be, the security, his agent, or attorney, shall have power to take out execution on such bond in favour of the plaintiff in such action, and it shall be the duty of the sheriff, or constable, as the case may be, to execute the same according to law: *Provided* the defendant in execution may at any time previously to the day of sale enter the collateral security required, with the clerk of the court of the county from which such execution emanated, or justice of the peace upon payment of all costs that may have accrued, and further proceedings thereon shall be stayed, until the original stay expires.

Proviso.

Judgment and execution may issue against collateral security.

Sec. 2. *And be it further enacted,* That all bonds taken in virtue of this act from the principal obligor to any replevy bond with collateral security, shall, when due, have the force and effect of a judgment, and execution may issue as well against such collateral security as against such obligor and his first security, for the moneys mentioned in such replevy bond, and the costs that may accrue in giving the collateral security required.

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* An Act passed on December 18, 1821, "prescribing the manner of changing the venue in criminal cases, and for other purposes," has the following clause. "Sec. 2. *And be it further enacted,* That it shall be (lawful) in issues, made up for the purpose of trying the right to any property taken in execution, for the judge trying such case to grant continuances upon good cause shown, as in other cases, any law to the contrary notwithstanding."

CHAPTER IX.

Extracts from "An Act to revise, consolidate, and amend the several Acts relative to Justices of the Peace and Constables."—*Passed December* 27, 1814.

SEC. 9. *And be it further enacted*, That if any person be garnisheed in attachment, and doubts be raised as to the right of property attached, then in the hands of the garnishee, or be claimed by him or her, or as to the right of any property attached, or as to the right of any property levied on by execution from a justice of the quorum, or of the peace, it shall be the duty of such justice to stay all proceedings, and issue a *venire facias* to the constable, requiring him to summon a jury of seven men, to appear before him at a certain time and place therein mentioned, not less than five, nor exceeding ten days, to try the right of property so attached or taken into execution; and the justice shall administer an oath to the jury so summoned, well and truly to try the right of property between the claimants, and a true verdict give, according to the evidence that may be produced on the trial: *Provided*, That any person conceiving himself aggrieved by any such verdict, may appeal therefrom to the next superior court, and the right of property may be tried at the first term of said court, by jury on an issue to be made up between the claimants, at or before the trial, and until such trial can be had, the attachment or execution shall continue to be a lien upon such property, so far as the defendant's right to the same extends; and the justice shall send up all the papers in such case to said court.

*SEC. 10. *And be it further enacted*, That it shall be the duty of each and every justice of the quorum, or of the peace, at the time he issues his warrant, summons, or capias, against any defendant, to annex thereto a copy of the account or note on which the plaintiff's claim is founded, and if the sum claimed be twenty dollars or under, the justice of the quorum, or of the peace, may, at the trial of the cause, proceed to examine plaintiff and defendant, on oath, and give judgment as to him the right of the cause may appear; and in all cases where the sum of money claimed exceeds twenty dollars, the oath of neither party shall be admitted, but the same evidence shall be required by each and every justice of the quorum, or of the peace, as is required in the superior court.

SEC. 11. *And be it further enacted*, That when any judgment is rendered by any justice of the quorum or of the peace, he shall, if the applicants give bond and security in double the amount of such judgment, including interest and costs for the payment of the same, at the expiration of the stay given by law, give a stay of execution, on all sums not exceeding ten dollars, forty days; on all sums over ten and not exceeding twenty dollars, sixty days; on all sums over, twenty dollars, and not exceeding thirty dollars, five months; and for all sums over thirty dollars, eight months; and in case the money be not paid at the expiration of such stay, execution shall issue against the the principal and security, or either of them, for the principal, interest, and costs, due on such judgment, and such judgments, and all other judgments rendered by justices, shall bear legal interest from the time of their rendition until paid, and all executions and summonses for garnishees in attachment, shall issue to the county where such principal, security, or garnishee may reside, and shall be duly executed and returned by any sheriff, coroner, or constable of the county to which the same is sent.

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* This section is repealed in part, by an Act passed in 1816.—See Title "Executions."

SEC. 12. *And be it further enacted*, That in order to give either party an opportunity to appeal, no execution shall issue on the judgment of any justice until five days after rendering such judgment, unless the plaintiff, his or her agent or attorney, will make oath, that he or she has just reasons to believe that the plaintiff will be in danger of losing his or her demand by such delay, in which case execution shall issue immediately, and shall operate as a lien upon the property of the defendant, but shall not deprive him or her of the right of appeal within the time prescribed by law.

SEC. 17. *And be it further enacted*, That where any property is taken by a constable, by virtue of an execution, he may, on the defendant in execution, or other person for him, giving bond and security in double the amount of the plaintiff's demand and costs, for the forthcoming of the property on the day of sale, permit the property to remain in the possession of such person until the day of sale; and in case said property is not forthcoming agreeably to the condition of such bond, the constable shall certify the same to the justice of the quorum or of the peace, issuing the execution, and at the same time inform the party replevying, or his security, that judgment is intended to be entered against him, her, or them, and the said justice shall, in ten days thereafter, enter judgment against the party replevying the property, and his or her security, and issue execution for the plaintiff's demand, including interest and costs; but if the party replevying appear within the time prescribed for entering such judgment, and show sufficient cause to the satisfaction of the justice for not producing said property on the day of sale, and deliver said property into the hands of the constable, and pay all costs that may have accrued in consequence of his failure, judgment shall not be entered against him, her, or them, for the plaintiff's demand.

NOTE.—The 31st section of the same act provides for the case of a justice or constable failing to pay over moneys collected. (See title "Justices of the Peace."). An act regulating judicial proceedings, passed in December, 1815, enacts that the clerks shall endorse on all executions, the several items contained in the bill of costs, (see title "Judicial Proceedings.") The seventeenth section will be found under title "Justices of the Peace," but it is also inserted, for the purpose of bringing into one view the laws regulating executions.

The remainder of this act will be found under titles, "Justices," and "Ministerial Officers."

CHAPTER X.

An Act concerning Stays on Executions, and regulating the Fees of certain Officers therein named.—*Passed December* 12, 1816.

Stays of execution on judgments of justices.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That hereafter, instead of the stay allowed on judgments obtained before justices of the peace or of the quorum, thirty days shall be given on all sums not exceeding twenty dollars, and sixty days shall be given on all sums over that amount: *Provided,* The defendant comply with the regulations of the act in that case made and provided.

NOTE.—For the rest of this act, see the titles "Fees," and "Justices of the Peace."

CHAPTER XI.

An Act for the better Regulation of Judicial Proceedings.—*Passed February* 7, 1818.

NOTE.—The first, second, eighth, and twelfth sections will be found under the title of "Joint Obligors."

Court may summon garnishees where execution returned no property found.

SEC. 3. *And be it further enacted,* That whenever a judgment shall have been rendered by any court of record, or any justice of the peace, in this territory, and an execution against the defendant or defendants shall have been returned by the proper officer, "no property found;" on the affidavit of the plaintiff, or other credible person, that said defendant, or defendants, hath or have no property within the knowledge of such affiant, in his or their possession, and that such affiant hath just reason to believe that another person or persons is, or are indebted to such defendant or defendants, or hath or have effects of such defendant, or defendants, in his or their hands, it shall be lawful for said court, or justice of the peace, to cause the person or persons supposed to be indebted to, or supposed to have any of the effects of the said defendant, or defendants to be summoned forthwith to appear before said court or justice, as a garnishee or garnishees, and said court, or justice of the peace, shall examine and proceed against such garnishee or garnishees, in the same manner as required by law against garnishees in original attachments.

[SEC. 4. Authorized judgments to be entered at the return term in actions of debt, founded on bonds, notes, or judgments, provided the writ had been issued sixty days before.

SEC. 5. Provided that executions from a superior court, should be returnable ninety days after they bore teste.

Both sections were repealed in 1819.]

Sheriff or clerk on failure of returning an execu-

SEC. 6. *And be it further enacted,* That if any sheriff shall on the return of an execution, fail to pay over any money collected by virtue thereof, he shall on motion of the plaintiff in such execution, as in other cases, be subject to a recovery of the amount by him received, and damages at the rate of fifteen per centum; and if any clerk shall fail to pay, on demand, to the party entitled thereto, or his attorney, any money by him received, in his capacity as clerk, he shall, in like manner, be subject to a recovery of the amount so received, and damages at the rate of fifteen per centum: the damages in either case, to be calculated from the time at which it is in evidence, such sheriff or clerk received such money.

tion, subject to a recovery of 15 per cent. interest.

Sec. 7. *And be it further enacted*, That if any sheriff shall fail to make the money required by any execution, before the return day thereof, when the defendant has sufficient property, within the knowledge of such sheriff, he shall be liable to a recovery of the amount due on such execution, ncluding interest and costs, in an action on the case brought by the party aggrieved.

Sheriff liable in certain cases.

Note.—For section the ninth, see "Chancery Proceedings," Chapter the fifth, Section tenth, see "Attachments," Section eleventh, see "Bail."

CHAPTER XII.

An Act supplemental to the Laws now governing Judicial Proceedings.—*Passed November* 21, 1818.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That whenever it shall hereafter become necessary, for want of personal property, to levy an execution issued by a justice of the peace, on land, it shall be the duty of the officer levying such execution, to return the same to the next superior court of his county, and such court shall on motion of the plaintiff, and it appearing by an exhibition of the proceedings before the justice, that the same have been regular, order a sale of such land, or whatever part thereof may be necessary to satisfy such execution.

How execution may be levied on land.

Sec. 2. *And be it further enacted*, That whenever it shall be made appear to the satisfaction of any county court, that the estate of any deceased person, or those who are entitled to inherit the same, will be less injured by a sale of the land, or part thereof, for the payment of debts, than by a sale of slaves, such court may, on the petition of any party interested, cause a citation to issue to all other interested persons, if in the county, or when that is not the case, by publication of notice in some paper for such interested party or parties to appear, at the next county court, and show cause, if any they can, why sale of the land belonging to the estate so situated should not be ordered, and on the return of such citation, made known or proof of the publication of the notice hereby required, at the next term of such county court, if no cause be shown which the court deem sufficient, such court may order sale of such land, or whatever parts thereof as may be necessary to satisfy debts, without a sale of

Optionable to sell land or negroes.

negroes; and such sale shall vest in the purchaser the same title in law or equity of which such decedent died possessed.

Garnishees.

SEC. 3. *And be it further enacted*, That hereafter, on the rendition of a judgment, by any court of record, or justice of the peace, if the plaintiff or other credible person make affidavit that the defendant or defendants hath or have no property within the knowledge of such affiant, in his or their possession, and that such affiant hath just reason to believe that another person or persons is or are indebted to such defendant or defendants, or hath or have effects of such defendant or defendants, in his or her hands, it shall be lawful for such court or justice to cause the person or persons supposed to be indebted to, or supposed to have any of the effects of said defendant or defendants, to be summoned to appear forthwith before such court or justice, as a garnishee or garnishees, and said court or justice shall examine and proceed against such garnishee or garnishees, in the same manner required by law, against garnishees in original attachments.

How tested.

SEC. 4. *And be it further enacted*, That all executions required to be issued on a return in vacation, shall bear teste on the return day of the last execution.

NOTE.—The other sections will be found under title, "Judicial Proceedings."

CHAPTER XIII.

An Act to provide for the Appointment of County Officers, and for other purposes.—*Passed December* 17, 1819.

NOTE.—The preceding sections of this Act will be found under the title "Public Officers."

Sheriff shall levy executions.

SEC. 16. *And be it further enacted*, That it shall be the duties of the sheriffs of the counties throughout the state, respectively, whenever any execution shall be placed in their hands, to proceed to levy the same, and make sale of the property thus levied on, in such times as by law is directed, and shall pay the amount obtained by such sale, to the party or parties entitled to the same, on the application of such party or parties, or within ten days thereafter, under the penalty of forfeiting six per centum per month, for every month such sheriff shall fail to pay over such money collected as aforesaid.

Pay over the money.

When to return executions.

SEC. 17. *And be it further enacted*, That it shall be the duty of the sheriffs to return all executions which have not been levied, or on which the money has not been made, to the office of the clerk of the court from which such execution may have been issued, by the first day of the term next succeeding the term from which such execution may have been issued.

NOTE.—See sections 7 and 8 of an Act passed in December, 1820, entitled "An Act to regulate the Proceedings in Courts at Common Law," under the title of "Judicial Proceedings," which sections contain provisions with regard to the time of issuing executions in certain cases, and the mode of staying judgments.

CHAPTER XIV.

An Act concerning Executions, and Sales by Sheriffs, and for other purposes.—*Passed December 20, 1820.*

Property exempt from execution.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the fifteenth day of January next, one bed and furniture, one cow and calf, the necessary wearing apparel, three spinning wheels, one loom, six plates, six knives and forks, six spoons, one axe and one hoe, and also one-fourth part of the provisions in possession, in every family of this state, shall remain free and exempt from execution, distress, or levy, any law, custom, or usage, to the contrary notwithstanding.

Land and slaves, when and where to be sold.

Sec. 2. *And be it further enacted,* That it shall be the duty of the sheriff in each county, to sell all land and slaves taken in execution by him, on the first Monday and following Tuesday and Wednesday in every month, and not otherwise, at the court-house door of his county, to the highest bidder; and no other than the legal title to land or other real estate, shall hereafter be sold or conveyed by virtue of any execution.

Equitable title liable by suits in equity.

Sec. 3. *And be it further enacted,* That the equitable title or claim to land or other real estate, shall hereafter be liable to the payment of debts by suit in chancery, and not otherwise; and when a bill shall be filed for that purpose, all persons concerned in interest shall be made parties thereto.

Proceedings in case property levied on, be claimed by a third person.

[*Sec. 4. *Be it further enacted,* That when personal estate shall be taken in execution, which is claimed by any other person than the defendant therein, it shall be the duty of the sheriff, constable, or other officer, to summon a jury of twelve good and lawful men to appear at the time and place fixed for the sale of such estate, to try the right thereof: and if the jury shall find the right to be in the defendant in the execution, the sheriff, constable, or other officer shall proceed to sell the same, and shall not be liable to any action therefor: but if the right shall be found for the adverse claimant, no sale shall take place unless the plaintiff will enter into bond, with good and sufficient security, in double the amount of such execution, payable to such claimant, conditioned for the payment of all damages which such claimant may suffer or sustain by the sale of the estate claimed as aforesaid.]

Sec. 5. *And be it further enacted,* That an action of debt may be maintained on said bond, and the amount of the damages sustained by the obligee therein, may be assessed by a jury, upon proper averment and proof of title in the plaintiff in such action, as in actions of trespass, for wrongfully taking said personal estate.

Sec. 6. *And be it further enacted,* That all acts and parts of acts, contrary to the provisions of this act, shall be, and are hereby repealed.

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* This section was repealed in December, 1821, but it is inserted on account of the bearing it may have on controversies growing out of it, yet undetermined.

CHAPTER XV.

An Act concerning Executions, and for other purposes.—*Passed June* 14, 1821.

Money receivable in payment of executions.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That on all writs of execution to be collected in the following counties, viz.: Madison, Jackson, Limestone, Lauderdale, Lawrence, Franklin, Cotaco, and Blount, the plaintiff shall make the following endorsement, viz.: "The within officer is authorized to receive in payment of this execution, notes of such banks as are received in the land office of this state, or the notes of any of the incorporated banks in this state;" on failure to make such endorsement the defendant shall have the right to replevy the debt for twelve months, and it shall be the duty of the sheriff or other officer, upon the defendant's tendering good and sufficient security for the debt, interest, and costs, payable to the plaintiff twelve months after the date thereof, to return to the defendant the property levied on in virtue of said execution, provided the same hath been done.

By citizens of Tennessee.

SEC. 2. *And be it further enacted*, That whenever any execution issues in any county in this state in favour of any citizen of the state of Tennessee, the plaintiff therein shall endorse on said execution as follows: "The notes of the bank of the state of Tennessee, notes of the state bank of Tennessee, notes of the Nashville bank, or the notes of the branches of either of said banks, may be received by the within officer in payment of this execution." And on failure to make such endorsement, the defendant shall have the right to replevy the debt, for twelve months, and it shall be the duty of the sheriff or other officer upon the defendant's tendering good and sufficient security for the debt, interest and costs, payable to the plaintiff twelve months after the date thereof, to return the property levied on in virtue of said execution, provided the same hath been done.

Replevy bond.

SEC. 3. *And be it further enacted*, That every such replevy bond, when due, shall have the force and effect of a judgment, and execution may issue thereon accordingly.

On mortgages.

SEC. 4. *And be it further enacted*, That it shall not be lawful for any trustee under any deed of trust or mortgage, to proceed to sell the trust or mortgaged property, unless the party for whose benefit the deed or mortgage was made, shall endorse, he is willing to take such money as is specified in the first section of this act: *Provided nevertheless*, that should the party for whose benefit the trust or mortgage was made, not be a resident of this state, then and in that case he shall endorse, that he is willing to take such money as is specified in the second section of this act.

Acts limited.

SEC. 5. *And be it further enacted*, That this act shall commence and be in force from and after the passage thereof, and shall continue in force until the first day of July, 1822.

Exemption.

SEC. 6. *And be it further enacted*, That the provisions of the first section of this act shall not extend to any person or persons who are citizens of this state, and not residing in either of the counties mentioned in the first section of this act.

SEC. 7. *And be it further enacted*, That no note or bond shall be assigned for the purpose of avoiding the provisions of this act, and upon proof of such assignment, any suit brought thereon, shall be dismissed, with costs.

CHAPTER XVI.

An Act to prevent Sheriffs and other Officers from levying Executions in certain cases.—*Passed November* 27, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, it shall not be lawful for any sheriff or other officer, to levy a writ of *fieri facias* or other execution on the planted crop of a debtor, or person against whom an execution may issue, until the crop is gathered.

CHAPTER XVII.

An Act concerning Writs and Executions.—*Passed December* 17, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That it shall be the duty of the sheriffs in the several counties in this state, to return all writs and executions to the clerk's office from which they shall issue, at least three days previously to the term of the court to which they shall be returnable; and that if any sheriff shall fail to return any writ or execution, according to the provisions of this act, he shall be liable to all the penalties provided by the laws now in force, for failing to return any writ or execution to the first day of the term of the court to which they are returnable.

Sheriff to return writs and executions, three days before the first day of the term.

SEC. 2. *And be it further enacted*, That the judges of the circuit courts, respectively, shall have power and authority in vacation, to supersede any execution, when it shall satisfactorily appear to them, or any of them, that the same shall have improperly issued from the clerk's office of any of the circuit courts of this state.

Judges may grant a supersedeas.

CHAPTER XVIII.

An Act to amend the Law regulating Proceedings upon the Claims of Property under Execution.—*Passed December* 19, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That in all trials of the right of property that may herefter arise, in consequence of any sheriff having levied execution on property claimed by any person not a party to such execution, that the burthen of proof shall be, and the same is hereby placed upon the plaintiff in the execution, as heretofore.

Burthen of proof placed on plaintiff.

Jury may assess damages.

SEC. 2. *And be it further enacted*, That in all trials of the right of property as aforesaid, when the jury may be of opinion that the claim was made to said property for purposes of vexation or delay, they shall have power to give such damages as the case may require, not exceeding fifteen per cent. on the amount of the execution.

Repeal.

SEC. 3. *And be it further enacted*, That the fourth section of an act, entitled "An Act concerning Executions and Sales by Sheriffs, and for other purposes," passed at Cahawba, on the twentieth day of December, one thousand eight hundred and twenty, be, and the same is hereby repealed.

Claim not dismissed but by consent of opposite party.

SEC. 4. *And be it further enacted*, That whenever any claim to property shall be hereafter made, the same shall not be dismissed, discontinued, or withdrawn, but by the consent of the opposite party.

Repeal.

SEC. 5. *And be it further enacted*, That all acts and parts of acts, contrary to the provisions of this act, be, and the same are hereby repealed.

CHAPTER XIX.

An Act amendatory to the Laws now in force for the Relief of Insolvent Debtors.—*Passed June* 15, 1821.

Debtor wishing to surrender, shall give bond.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, when any person may be taken on mesne process, or be taken in actual custody, or be charged in execution, and be desirous to deliver up his or her property for the benefit of his or her creditors, in order to be discharged from arrest or imprisonment, he or she shall enter into bond with sufficient security, for the amount for which he or she shall be taken into custody, or be charged in execution to the sheriff or other officer arresting such person, or charging him or her in execution, conditioned that he or she will personally appear and make surrender in such manner as is now required by law of his or her property or effects, for the benefit of his or her creditors, at such time and place as may be designated by the judge, or two justices of the county, where such person may make his or her application; or when any person may conceive him or herself unable to pay, satisfy, or discharge his or her debts, and may be desirous to exonerate him or herself from arrest, confinement, or the operation of legal process, and shall make known to any judge of the circuit courts of this state, or to any judge of the county court, or to the justices of the peace of the county where the application may be made, the names and the residence of his or her creditors, or where they resided when the debts were contracted, and of his or her wish, and intention, to exonerate him or herself from imprisonment, arrest, or legal process, it shall be the duty of the judge or justices to whom the application may be made, to appoint a time and place, and to cause at least ten days notice

Notice to be given of surrender.

to be given to the creditors, their agents, or attorneys, if within this state, and if without the state, twenty days notice by advertisement in some public paper or papers, near where the creditors resided when the debts were contracted, or by causing notice to be served on them, of the application of the debtor, and of the time and place appointed by him or her to make his or her surrender, and to obtain for his or her person a discharge from arrest or confinement.

Applicants for surrender shall deliver schedule with oath.

SEC. 2. *And be it further enacted,* That the applicant coming before the judge or justices, (as the case may be,) at the time and place appointed, shall subscribe and deliver in a schedule of his whole estate, and make oath to the effect of that now required by law, in relation to insolvent debtors, with the exception of such articles as are, or hereafter by law may be reserved to every family, or be exempted by law from seizure or execution, which schedule, and the property therein mentioned, shall be disposed of in the manner directed by the existing laws, for the benefit of his or her creditors generally. Whereupon such debtor shall be discharged by warrant from the judge or justices to whom the application may be made: *Provided nevertheless,* that it shall be lawful for any creditor or creditors, to prosecute his or their claim or claims to judgment, or by judgment at any time afterward obtained, to sue out a writ of *scire facias,* and to have execution against any lands or tenements, goods or chattels, which such insolvent person may thereafter acquire, or be possessed of, but no person delivering in such schedule, and having taken the oath prescribed by this section, shall afterward be subject to imprisonment, arrest, or confinement on account of any debts contracted, due, or owing previous to the surrender of his or her property.

Exception.

Debtors to be discharged.

Proviso.

Property acquired after surrender, subject.

Penalty for false return.

SEC. 3. *And be it further enacted,* That any insolvent debtor who may wish to avail himself of the benefit of this act, and who shall wilfully and knowingly make a false return and surrender of his or her property or estate, or any part thereof under the provisions of this act, and be convicted thereof, shall be subject to all the pains and penalties prescribed by law against perjury, and shall never thereafter be entitled to the privileges or benefits extended by this act.

Time of surrendering limited.

SEC. 4. *And be it further enacted,* That no person in custody shall have the liberty of the prison bounds, who shall neglect or refuse for sixty days to take the benefit of this act.

Persons fined, may take the benefit of this act.

SEC. 5. *And be it further enacted,* That all persons ordered to be imprisoned for failing to pay any fine imposed by law, who shall be unable to pay the same, shall have the benefit of this act, subject to the same rules and instructions applicable to other debtors.

Repealing clause.

SEC. 6. *And be it further enacted,* That all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER XX.

An Act giving Execution for Costs in the Supreme Court.—*Passed December 26, 1822.*

Clerk may issue writ of execution for costs.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That in causes wherein the judgments have been affirmed or reversed by the supreme court, and in which the costs incurred in that cause have not been collected, the clerk of the said supreme court may issue the proper writs of execution in the names of the successful parties against the parties respectively subjected to the payment of such costs, returnable to the succeeding term thereof.

Court may give judgment, and award execution for costs.

SEC. 2. *And be it further enacted,* That when judgment of an inferior court in any cause shall be affirmed or reversed by the supreme court, the said supreme court may give judgment, and award execution against the unsuccessful party for the costs of such cause, incurred in the said supreme court: And it shall be the duty of the sheriff or other officer, to whom such writ of execution shall be directed, to levy or execute, and make return thereof to the said supreme court, on or before the first day of the return term therein named, and render to the said clerk the moneys collected by him, according to the exigency of such writ.

Sheriff to levy and make return.

Sheriff not returning execution may be moved against, and judgment issue.

SEC. 3. *And be it further enacted,* That if such sheriff or officer fail so to return such writ of execution, or to pay the moneys by him made as aforesaid, the clerk of the said supreme court may, in the name of the successful party in the cause, upon giving to such sheriff or officer, or to such sheriff and his securities ten days previous notice; and upon proof of such notice, move for at the next term of the circuit court of the county in which such sheriff or officer resides, and obtain judgment and execution against such sheriff or officer, or such sheriff and his securities so notified, for the amount of the writ of execution not returned as aforesaid, or the deficit of the moneys made and not rendered.

SEC. 4. *And be it further enacted,* That if any sheriff or coroner in this state shall fail or refuse to return any execution issuing from the supreme court as aforesaid, and placed in his hands, to the return term of said court named in said execution, it shall be lawful for the party at whose instance said execution issued from the supreme court to obtain judgment against said sheriff or coroner for the amount of money named in said execution, and costs of the motion: *Provided always,* That the certificate of the post-master living at the seat of justice of the county of which he is sheriff or coroner, or the nearest one thereto, that said sheriff or coroner has placed in his office, sealed up in his presence, and directed to the clerk of the supreme court, any execution, and the amount of money collected thereon which has been placed in his hands, shall be sufficient evidence on the part of said sheriff or coroner, to prevent judgment from being obtained against him and his securities as aforesaid.

CHAPTER XXI.

An Act for the Trial of the right of Property taken by virtue of an Execution or Attachment, and claimed by any Person not a Party to the Suit.—*Passed December* 20, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the first day of January next, in all cases where property shall be taken by virtue of an execution or attachment, when the sum claimed doth not exceed fifty dollars, the person or persons claiming the same, and not being a party to the suit, may apply to some justice of the peace for a *venire facias* directed to the constable or other officer, to summon seven good and lawful jurors to attend at such time and place as he the said justice shall appoint, not less than five nor more than ten days from the time of issuing the same: *Provided always*, That the said justice of the peace, before he issues his *venire facias*, shall require the claimant to make oath or affirmation of his right to the property; and if the jury shall find the property liable to the execution, the person or persons laying claim, shall pay the cost of said trial, and execution may issue therefor: But if the property shall be found to be the property of the person laying claim, the plaintiff shall pay the costs which shall be to the justice of the peace, for issuing the *venire facias*, fifty cents; for attending on the trial fifty cents; to the constable for summoning the jury and attending the trial, one dollar and fifty cents.

Property claimed by a person not a party to the suit.

Right may be tried by jury.

Proviso.

And pay costs in certain cases.

SEC. 2. *And be it further enacted*, That the jury so summoned, when they appear at the place appointed, shall take the following oath, viz.: "We and each of us do solemnly swear, (or affirm, as the case may be,) that we will well and truly inquire into the right of the property now held, by execution or attachment, (as the case may be,) and a true verdict give, according to evidence: So help me God:" *Provided always*, that if any of the jurors summoned as aforesaid, fail to attend, the constable shall complete the number from the bystanders; and the verdict of the jury shall be returned to the justice who shall enter judgment thereon; and if either party be dissatisfied with such judgment, they shall be entitled to an appeal to the next circuit court, where the trial shall be had the first term, by an issue made up by the parties or their counsel.

Oath of jury.

Constable may summon bystanders to complete a jury.

Parties may appeal.

SEC. 3. *And be it further enacted*, That where it may appear to the satisfaction of the jury, that the claim was set up for the purpose of vexation or delay, the jury shall assess the damage not exceeding fifteen per cent. on the amount of the plaintiff's claim.

Jury may assess damages.

SEC. 4. *And be it further enacted*, That any person being returned as a juror, to try the right of property as aforesaid, and

Defaulting jurors to be fined.

failing to attend, it shall be the duty of the justice attending said trial, to assess a fine on said juror, not exceeding five dollars; but if said juror shall attend within five days, and render a sufficient excuse to the justice aforesaid, his fine shall be remitted; and any witness failing to attend and give evidence, when legally summoned for that purpose, shall be liable, in like manner, to a fine not exceeding five dollars; which fines shall be collected by the constable, and paid to the county treasurer.

Witnesses failing to attend may be fined.

Repeal.

SEC. 5. *And be it further enacted*, That all acts and parts of acts, coming within the purview and meaning of this act, be, and the same are hereby repealed: *Provided*, that nothing herein contained, shall be so construed as to prevent the party, in whose possession the property is levied on, to retain that possession, under the rules and regulations heretofore prescribed by law.

EXECUTORS AND ADMINISTRATORS.—1803.

CHAPTER I.

An Act concerning Wills, and the duty of Executors, Administrators, and Guardians.—*First passed March* 12, 1803.

*SEC. 20. *And be it further enacted*, That if any person die intestate, or the executors named in any testament renounce the executorship, or refuse, or neglect, for the space of forty days after the death of the testator, to exhibit such testament for probate, then administration of the goods and chattels, rights and credits of such intestate, or of such testator, with the testament annexed, shall be granted to the widow, or the next of kin of such intestate or testator, or to some of them; and in case of their and each of their refusal, then to a principal creditor or creditors of such intestate or testator: and if none of them will accept thereof, then to such other proper person or persons as will accept the same.

To whom administration may be granted.

SEC. 21. *And be it further enacted*, That the chief justice of the orphans' court of the county in which such justice resides, besides presiding in the orphans' court in the term time, is hereby empowered and required to take, receive, and audit all accounts of executors, administrators, and guardians; to receive wills exhibited for probate, applications for administration, inventories and appraisements; and to order such inventories and appraisements, duly made and sworn to, to be recorded; to appoint guardians to minors, of their own election: to cause to be issued all citations and other necessary process, returnable to the next term of said court: [and whenever he may deem it necessary to appoint an administrator or admi-

Chief justice to audit accounts, &c.

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* The preceding 19 sections of this Act will be found under title "Wills," chapter 2; in the 19th section of which the Court authorized to grant Letters of Administration is particularly designated.

nistrators, to collect together the goods of the deceased, for the purpose of depositing them in the hands of the said chief justice, out of which he shall pay the debts of the deceased, and be liable in law as other administrators.*]

Accounts, &c. how allowed and disputed.

And the said chief justice, after examining and auditing such accounts, and causing them to be properly stated, shall report the same for allowance to the next term of the said orphans' court, the executor, administrator, or guardian, giving at least forty days notice of his intention of having such account presented to the said court for allowance at such term, by posting up notice thereof in three of the most public places in the county, or advertising the same for three weeks at least, in some public newspaper in this territory, whichever, and as the said chief justice shall have directed; and the court on due proof of notice as aforesaid, and no exception being made to the report of the chief justice, may decree an allowance of the account as stated; but if any person or persons, interested in the settlement of the said account, shall by himself or attorney, appear and make exception to the report, the court shall either proceed to hear the proofs and allegations, and correct or amend the mistakes or errors in the account as reported, or refer the same to auditors, who shall examine and re-state the account after hearing parties and witnesses, and make report to the next or some subsequent term of the said court, for confirmation and allowance as aforesaid.†

Register's duty.

Sec. 22. *And be it further enacted*, That the said chief justice shall cause to be kept by the register of the orphans' court, a docket in which shall be entered, in vacation, the names of all accountants, applicants for the probate of wills, or for letters of administration or guardianship, in the order as to priority of time such accounts were exhibited, or applications were made, to the end that such accounts may be allowed, and applications heard and determined at the next term of the said court; and shall moreover direct all necessary notices and citations to those principally interested, if in this territory, to appear and show cause at the next term, why such applications should not be granted: *Provided*, That wills may be proved, and letters of administration and guardianship may be granted, where no application has been made to the chief justice in vacation.

County clerk to be clerk ex officio, but to keep separate docket.

Sec. 23. *And be it further enacted*, That the clerk of the county court of each county shall, by virtue of his office, be register of the orphans' court of the same county, and shall take and subscribe an oath or affirmation in open court, for the faithful discharge of the duties of his office. And it shall be the duty of said register to keep and preserve all records, files, papers, and proceedings of the said court, as an orphans' court, separate and distinct from the records, files, and proceedings of the county court; to record all last wills and testaments, duly proved and approved; all accounts finally allowed; all inventories and appraisements duly made and sworn to; to issue all citations, subpœnas, and other process, as issue of course; and all such as are directed by the court in term time, or chief justice in vacation; and to do and perform all those things that appertain to the office of a register, or clerk of the said orphans' court. And the said register's office shall be under the direction of the court in term time, and of the said chief justice in vacation.

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* The clause within the brackets repealed in 1810.

† So much of section 21, as makes it the duty of the Executor or Administrator to give notice, has been repealed by an Act passed December 12, 1822, which imposes the duty upon the Judge of the County Court. See chapter 15, of this title.

Special orphans' courts.

*SEC. 24. *And be it further enacted*, That the chief justice of the orphans' court in every county, shall have power and authority, and is hereby authorized, as often as he may deem it necessary and expedient, to call, and cause to be held, a special orphans' court, for the purpose of granting letters of administration, on any intestate's estate, or to take the probate of, and grant letters testamentary on the will of any testator: and for that purpose the said chief justice may issue his summons to any two or more justices, requiring their attendance at the usual place of holding the said orphans' court, at least seven days before the time by him appointed for holding such special court.

Mode of issuing letters of administration, &c.

SEC. 25. *And be it further enacted*, That letters testamentary, letters of administration, and letters of guardianship shall be tested in the name of the said chief justice, and signed by the register. And all process issuing fromthe said court, shall be tested and signed in like manner, and bonds given by executors, (in such case as they are directed to give bond) by administrators and guardians, and all other bonds taken in the said court, shall be made payable to the said chief justice, and his successors in office.

Appraisers to be appointed.

SEC. 26. *And be it further enacted*, That every orphans' court granting letters testamentary, or letters of administration, shall nominate, and by warrant appoint three or more judicious and discreet persons appraisers of the estate of the decedent, who shall return their appraisement on oath, in such time as the court shall appoint, of all the personal estate of such decedent to them shown: which appraisement, if subscribed and sworn to by the executor or administrator, may be considered as an inventory of such part of the estate, as had theretofore come to his hands: and inventories (which the executor or administrator in all cases shall return at the time limited by the court,) and appraisements, may be given in evidence in any suit, by or against the executor or administrator: but shall not be conclusive for or against him, if it be shown that the estate was really worth, or was *bona fide* sold for more or less than the appraisement.

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* The 24th section was repealed by an act establishing two intermediate courts, and passed March 4, 1808, which act was itself repealed without reservation by "An Act to repeal an Act establishing two intermediate Courts," passed December 22, 1809, and which provided that the aforesaid intermediate courts should have power to perform all the duties then given and required of them by the existing laws of the Territory as an orphans' court, and also to do the business of the county as it relates to roads, bridges, ferries, and no more. On the 3d December, 1810, another act was passed on the subject "extending the power of the chief justice," &c. See title "Courts Inferior."

Personal estate, how disposed of, &c.

SEC. 27. *And be it further enacted*, That when any person shall die, possessed of goods and chattels, or personal estate not bequeathed, the same shall descend to and be distributed among his or her heirs, in the same way and manner that real estates not devised, descend by this act: *Provided*, That the goods and chattels, or personal estate of any person deceased, whether testator or intestate, shall stand chargeable with the payment of all the just debts and funeral expenses of the deceased, and the charges of settling the said estate; and after the payment thereof, the surplusage, in case of intestacy, shall be decreed by the orphans' court: one third thereof to the widow of the deceased person, unless the intestate died without children, or descendants of them: in which case she shall be decreed one half thereof for ever: and the lands, tenements, and hereditaments of the testator, or intestate, shall stand chargeable with all the debts of the deceased, contracted after the passing of this act, over and above what the personal estate shall be sufficient to pay as aforesaid; saving to the widow her dower in all cases, as is before provided.

Proceeding, when the goods are insufficient.

SEC. 28. *And be it further enacted*, That when any executor or administrator shall discover, or believe that the personal estate of his testator or intestate, is insufficient to pay the debts of the deceased, then it shall be the duty of such executor or administrator, as soon as may be, to make and exhibit on oath, a just and true account of the said personal estate and debts, as far as he can discover the same, to the orphans' court, or chief justice thereof: and the said court, or chief justice, shall thereupon cause a citation to issue, directing all persons interested in the lands, tenements, and hereditaments of the deceased, to appear before the orphans' court, at a certain day therein to be named; and not less than forty days after the time of issuing such citation, to show cause why so much of the said lands, tenements, or hereditaments, of the said testator, or intestate, should not be sold as will be sufficient to pay his or her debts, or the residue thereof, as the case may require: which said citation shall immediately thereafter be set up in three of the most public places in the county in which such lands, tenements, or hereditaments be, for the space of thirty days, and be published for the same term of time in one of the public newspapers in this territory.

Citations to issue to persons interested.

Court to determine on the quantum of lands to be sold.

SEC. 29. *And be it further enacted*, That the orphans' court shall, at the time specified in said citation, or at such other time as they may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and of other persons interested. And if the said court on such examination, shall find that the personal estate of such testator, or intestate, is not sufficient to pay his or her debts, the said court shall order and direct the executor, or administrator, to sell the whole if necessary, of the lands, tenements, or hereditaments, of the said testator or intestate, for the payment of his or her debts; or so much thereof as will be sufficient for that purpose, and when a part only, the said order shall specify what part. *Provided*, when any houses, lots, or lands, are so situated or circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at their discretion, order the whole, or a greater part, than is necessary to pay such debts, to be sold; and the overplus money arising from such sales, shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will in the latter case. And the heir or devisee, whose lands, tenements, or hereditaments, so descending or devised, shall be sold as aforesaid, for the payment of the debt of the intestate or testator, may compel all others claiming or holding under such intestate or testator, to contribute in proportion to their respective interests, so as to equalize the burthen or loss.

Executors, &c. to give bonds concerning the sales of lands.

SEC. 30. *And be it further enacted*, That every executor, administrator, or guardian, empowered by the orphans' court, or supreme, or superior court, in chancery, to sell the lands, tenements, and hereditaments, or any part thereof, of any testator, intestate, ward, idiot, lunatic, or person *non compos mentis*, shall, before he or she obtain the order of sale from the office of the register or clerk, enter into bond with sufficient sureties, to the chief justice of the orphans' court of the proper county, that he or she will observe the rules and directions of law, for the sale of real estates by executors, administrators, or guardians, (as the case may be) and that he or she will well and truly account for the proceeds of the said sale; and that the same shall be disposed of agreeably to the rules of law.

Proceedings previous to, and on the sale of lands.

SEC. 31. *And be it further enacted*, That the executor or administrator, who may be ordered to sell any lands, tenements, or hereditaments, of any testator or intestate, shall give notice by advertisements, put up at three or more public places in the county, where the lands, tenements, or hereditaments are situated, of the time and place of selling the same, at least forty days before the time of sale; and by publishing such advertisements in one of the public newspapers, in this territory, for three weeks successively, before such days of sale; and shall at the time and place appointed, set up the said lands, tenements, and hereditaments for sale, at public vendue, upon a credit of twelve months from the day of sale, and strike off the same to the highest bidder, who shall give bond with satisfactory security for the amount thereof; and the executor or administrator making such sale, shall make report in writing of all the proceedings thereon to the next orphans' court after such sale: *Provided*, that such executor or administrator may adjourn the said sale from time to time not exceeding forty days in the whole.

To be reported to the court.

Adjournments of sales.

Deeds of the executors to be valid.

SEC. 32. *And be it further enacted*, That the said executor or administrator shall, and is hereby authorized to make a deed or deeds to the purchaser or purchasers, to the lands, tenements and hereditaments so sold; which deed or deeds shall vest in such purchaser or purchasers as good and perfect an estate in the premises therein mentioned, as the heirs or devisees of such testator or intestate were seized of, or entitled to, at the time of making the said order of sale by the said orphans' court.*

Sec. 33. *And be it further enacted*, That when the estate, both real and personal, of any person deceased, shall be insolvent, or insufficient to pay all just debts which the deceased owed, the said estate, both real and personal, shall be distributed to, and among all the creditors, in proportion to the sums to them respectively due and owing; saving that debts due for the last sickness, and necessary funeral expenses of the deceased, are to be first paid: and the executor or administrator shall exhibit to the orphans' court, or chief justice thereof, (before any debts paid to any creditor, except as aforesaid) an account and statement, as is directed in the twenty-eighth section of this act; including also the lands, tenements, and hereditaments of the testator or intestate. And if it appear to the said orphans' court, that such estate is insolvent, then, after ordering the lands, tenements, and hereditaments of the testator or intestate to be sold as aforesaid, they shall appoint two or more fit persons to be commissioners, with full power to receive and examine all claims of the several creditors of such estate; and the said commissioners shall cause the times and places of their meeting to attend the creditors, for receiving and examining their claims, to be made known, by causing notifications to be posted up in such public places, and published in such newspaper or papers, as the orphans' court, or chief justice thereof shall direct: and six months, and such further time (as the circumstances of the estate may require) not exceeding eighteen months, shall be allowed by the said court to the creditors, for bringing in and proving their claims before the said commissioners; at the end of which limited time, the said commissioners shall make their report, and present on oath a list of all the claims that shall have been laid before them, with the sums they shall allow on each respective claim, to the said orphans' court. And the said court shall order just recompense to the said commissioners out of the deceased's estate. And the debts due for the last sickness, and necessary funeral expenses being first deducted, the said court shall order the residue and remainder of the estate, both real and personal, (the real estate being sold according to law) to be paid and distributed by the executor or administrator, to and among the creditors, who shall have made out their claims with the commissioners as aforesaid, in proportion to the sums unto them respectively due and owing: *Provided*, That notwithstanding the report of any commissioner, the creditor whose claim is wholly, or in part rejected, or any executor or admi-

Estates of persons altogether insolvent, to be distributed among the creditors, except, &c.

Proceedings therein.

Commissioners to be appointed.

To give public notice, &c.

Limitation for claims.

Executors to distribute the estate.

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* For the mode in which deeds may be given by Executors, and when the deceased has given bond for titles, see Chapter 5, of this Title.

nistrator, who may be dissatisfied with such report, on a particular claim, may, for good and sufficient cause shown by the said creditor, executors, or administrators, to the said orphans' court, have the said claims referred by the said court to referees, whose report and award thereon, returned to the next term of the said court, and approved of, shall be final and conclusive.

Suits against executors,&c. suspended.

And to the end that the executor or administrator may have an opportunity to ascertain the situation of the estate of the testator or intestate, no suit or action shall be commenced or sustained against such executor or administrator, in such capacity, till after the expiration of six months from the time of proving the will of the testator, or of granting letters of administration on the estate of the deceased. Nor shall any suit or action be commenced or sustained against him, after the estate of the testator or intestate be represented insolvent: *Excepting, however*, in all cases, actions for debts due for the deceased's last sickness and funeral expenses: *Excepting also*, that if the executor or administrator, having objections to the claim on which any action (other than those last mentioned) may be brought, shall consent to have such claim settled by action at law; in such case, the judgment of the court shall determine the claim, and be reported by the commissioners as such.

Liability of executors.

Every executor or administrator, after final apportionment of such distribution among the creditors of the testator or intestate as aforesaid, shall be liable to the creditors for their respective shares in such distribution.

Claims when barred.

And if any debtor shall not make out his claim with the commissioners within the time of their commission, or before referees, or at common law, in the manner this act provides, he shall be for ever barred of his debt or demand; unless such creditor shall find other estate of the deceased, not inventoried or accounted for by the executor or administrator before distribution.

Of debts not actually due.

SEC. 34. *And be it further enacted*, That any creditor, whose debt is not due, may exhibit it to the executor or executors, administrator or administrators, as if it were due, and thereupon shall be considered as a creditor under this act; and shall receive a dividend of the said testator, or intestate's estate; deducting a rebate of legal interest, for what he shall receive on such debt, to be computed from the actual payment thereof to the time such debt would have become due.

Special pleading not required of executors,&c.

SEC. 35. *And be it further enacted*, That executors, administrators, and guardians, shall not be compelled to plead specially to any action, or suit at law, brought against them in their said capacity, but may, under the general issue, give any special matter in evidence.

Claimants may be examined upon oath.

SEC. 36. *And be it further enacted*, That the commissioners appointed to receive and examine the claims of the creditors to the estate of any person deceased, when reported insolvent, are hereby authorized and empowered, when judged expedient by a majority of them, to examine on oath or affirmation, any creditor, touching the truth of his or her claim; and may thereupon inquire of such creditor the truth of any writing, demand, or the charges in any account exhibited as a claim against such insolvent estate: and whether the same, and every part thereof, remains actually due and unpaid: and may make such other questions relative thereto, as shall be material, and tending to discover the truth of such claim: and the said commissioners, or either of them, are hereby authorized and empowered to administer such oath or affirmation. And if any person, who shall have taken such oath or affirmation (the same having been duly administered as aforesaid,) shall thereupon wilfully and corruptly make any false answer or answers to any question or questions, material to the determination of the truth of the claim, in proof of which, such oath or affirmation shall have been taken, and shall be thereof duly convicted, he or she so offending, shall be adjudged guilty of wilful and corrupt perjury, and liable to the pains and penalties thereof.

Court to take bond of administrators.

SEC. 37. *And be it further enacted*, That the orphans' courts of the respective counties of this territory, and every of them, shall upon the respective granting and committing of administration of the goods and chattels of persons dying intestate, take of the respective person or persons, to whom such administration shall be granted, sufficient bonds, with two or more able sureties, to the chief justice of the said court, and his successors in office, in such penalty as the said court shall deem reasonable, (respect being had to the value of the estate) with condition and form, in manner following, to wit:—"The condition of this obligation is such, that if the above bounden A. B. administrator of all and singular the goods, chattels, rights and credits of C. D. deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, rights, and credits of C. D. deceased, which have or shall come to the hands, possession, or knowledge of the said A. B. or into the hands or possession of any other person or persons for the said A. B., and the same so made, do exhibit, or cause to be exhibited into the register's office of the orphans' court of the county of ———, at, or before the expiration of ——— calendar months from the date of the above written obligation, and the same goods, chattels, and credits of the said deceased, at the time of death, which any time after come to the hands or possession of the said A. B. or into the hands or possession of any other person or persons for the said A. B. do well and truly administer according to law; and further, do make, or cause to be made, a just and true account of ——— administration within ——— calendar months, from the date of the above written obligation; and all the rest and residue of the said goods, chattels, and credits, which shall be found remaining upon the account of the said administration (the same being first examined and allowed by the orphans' court of the county aforesaid,) shall deliver and pay unto such person or persons respectively, as are, or shall be by law, entitled to receive the same. And if it shall hereafter appear that any last will and testament was made by the said deceased; and the executor or executors therein named, or any other person or persons do exhibit the same into the said court, making request to have it allowed and approved: if the said A. B. being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) to the said court; then the above obligation to be void, otherwise to be and remain in full force and virtue."*

SEC. 38. *And be it further enacted,* That the like bonds, suited to the nature of the respective cases, shall be given by all executors, by administrators appointed during the minority of an infant executor or administrator, by administrators appointed during the absence of the next kindred; by administrators appointed whilst a suit is pending; and by administrators who have a will annexed to their letters of administration, and by all other administrators, by whatever other name or description they may be known or distinguished.

Proceedings on a forfeiture of the bond.

SEC. 39. *And be it further enacted,* That in case any bond shall become forfeited, it shall and may be lawful for the chief justice of the orphans' court, to cause the same to be prosecuted, at the request of any party grieved by such forfeitures: and it shall not become void upon the first recovery, but may be prosecuted from time to time, at the request of any party grieved, until the whole penalty be recovered thereon; and the moneys recovered upon such bond shall be applied towards making good the damages sustained by the not performing the condition thereof, in such manner as the orphans' court, by their sentence, or decree shall direct.

Court may require further securities of administrators,

SEC. 40. *And be it further enacted,* That the said orphans' court shall have full power, when letters of administration shall be granted upon insufficient security, to order and direct such administrators, to give further and sufficient security, by bond in the usual form. And if it appears upon examination, that any administrator hath embezzled, wasted, or misapplied all, or any part of the decedent's estate, or shall refuse or neglect to give bond, with security as aforesaid, the said court may forthwith revoke or repeal the letters of administration, and thereupon grant letters of administration to such other person or persons, having right thereto, as will give bonds in manner and form aforesaid; who may have actions of trover, detinue, account, and on the case, for such goods or chattels as come to the possession of the former administrators, and withheld, wasted, embezzled, detained, or misapplied, by any of them, and no satisfaction made for the same.

and revoke and grant anew letters of administration.

The remedy where executors or administrators are absent, insane, or unable to discharge their trust.

SEC. 41. *And be it further enacted,* That if any executor of any last will and testament, or administrator of an intestate's estate, residing out of this territory, at the time of taking that trust, or afterward removing out of the said territory, shall refuse or neglect, after due notice from the orphans' court to render his or their accounts, and make settlement of such estate, with creditors, legatees, or heirs, or their legal representatives: or if any executor or administrator shall become insane; or if any administrator becomes otherwise incapable of, or evidently unsuitable to discharge the trust reposed in him, the said orphans' court are authorized and empowered in each and every of the said cases mentioned in this section, to grant letters of administration, with the will annexed, or otherwise, as the case may require, to such person or persons as may be entitled to the same, and as to the said court shall seem meet. And the administrator thus appointed shall have the same power and authority to administer the estate of the deceased, not administered upon by such former executor or administrator, and be subject to the same duties, in as full and ample a manner, as if the executor or administrator, so removed, or residing out of this territory, as aforesaid, were actually dead.

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* Another Bond will be found in Chapter XI. of this Title

Action of account may be brought by administrators against each other.

SEC. 42. *And be it further enacted,* That when two or more have letters of administration granted to them of any intestate's estate, and one or more of them take all, or the greatest part of such estate and refuse to pay the debts or funeral expenses of such intestate, or refuse to account with the other administrator; in such case, the administrator so aggrieved, may have his action of account against the other administrator or administrators; and recover such proportionable share of such estate as shall belong to him; and any executor being a residuary legatee, may have an action of account against his coexecutor or executors, and recover his part of the estate in the hands of such coexecutor or executors; and any other residuary legatee may have the like remedy against the executors; and any person having a legacy bequeathed in any last will and testament, may sue for, and recover the same at common law.

Proceedings on a joint devise of real estate.

SEC. 43. *And be it further enacted,* That when any person by last will and testament, shall devise his or her real estate, or any part thereof, to two or more devisees, not ascertaining the metes and boundaries of each devisee's share, any of whom being under age, and their shares being undivided, such devisees may apply to the orphans' court of the county in which the said last will and testament was proved and recorded, and the said court, on application of any one of the said devisees, may order a division thereof to be made, agreeably to the true intent and meaning of the said last will and testament; and each devisee's share shall be ascertained by three or five indifferent freeholders, appointed by the court, and a report made thereupon by them, or a majority of them, under their hands and seals, to the next orphans' court, after such division shall be made; such report being approved by the said court, and entered on the records thereof, shall be conclusive to all parties concerned. And when the real estate of any person dying intestate, shall descend to two or more children, or other heirs of such intestate, one or more of whom being under age, the said court, on application, may order and direct a division of such real estate agreeably to the law of descents, the metes and bounds of each heirs's share to be ascertained by three or five indifferent freeholders, appointed as aforesaid, and whose report, or that of a majority of them, returned, approved, and recorded, as aforesaid, in case of devisees, shall be conclusive on all parties concerned: *Provided*, That in each case the report of the said freeholders shall be returned under oath: *And provided also*, That the devisees or heirs in this territory, or the guardians of such as are under age not applying for such division, shall have such notice of the time and place of the meeting of the said freeholders, for the purpose of making the said division, as the court shall direct.

NOTE.—Sections from 44 to 53 inclusive, will be found under title 32, "Guardians," and the remaining sections under title 67, "Wills."

CHAPTER II.

An Act supplementary to "an Act, concerning Wills and Testaments, the Settlement of Intestates' Estates, and the Duty of Executors, Administrators, and Guardians."—*Passed December* 22, 1809.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That from and after the passage of this act, it shall not be lawful for any executor or executors, administrator or administrators, guardian or guardians, to take the estate, or any part thereof, of any testator or intestate, at the appraised value, or to dispose of the same at private sale, except where the same is directed by the will of the testator. But in all cases where it may be necessary to sell the whole, or any part of the personal estate of any testator or intestate, that it shall be the duty of the executor, administrator, or guardian, to apply to the orphans' court of their county for an order of sale, and upon obtaining the same, to advertise the time and place of such sale, in three or more public places in their county, at least thirty days previous to the day of sale, and then and there proceed to sell the same at public sale to the highest bidder, giving at least six months credit, the purchaser giving bond with approved security.

CHAPTER III.

An Act fixing the Time of Holding the Intermediate Courts, Extending the Powers of the Chief Justice, &c.—*Passed December*, 1810.

NOTE.—This act has been introduced under title "Inferior Courts," and a note relating to it has been made under the present title, chapter 1. The first section fixes the times of holding intermediate courts; the 2d gives them the power of orphans' courts; the 3d authorizes special courts for the probate of wills; the 4th repeals a part of the 21st section of the "Act concerning Wills," and the 5th is in the following words:

SEC. 5. *Whereas* it may sometimes become necessary to dispose of the crop belonging to the estate of deceased persons at private sale, *Be it therefore enacted*, That upon an application being made by any executor, administrator, or guardian, to the orphans' court of any county, or in vacation to the chief justice of said court, such court or chief justice may grant an order for the sale of the crop belonging to the estate, in such manner as shall seem reasonable, and the situation of the estate require; and in all cases, it shall be the duty of the court to require of the applicant, or applicants, an account of his proceedings under such order, to be rendered to the next orphans' court of their county.

NOTE.—An act, passed in 1811, regulating judicial proceedings, " provides that the action of trover shall survive against executors and administrators, and that an executor or administrator shall not be liable, out of his individual estate, for not pleading, mispleading, or false pleading." A preceding act to prevent suits from abating on the death of either party, had provided, that if the cause of action survived, the executor or administrator might prosecute or defend until final judgment. See title " Judicial Proceedings."

CHAPTER IV.

An Act concerning the Distribution of Intestate's Estates.—*Passed December 21, 1812.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That any person entitled to the distribution of an intestate's estate, may at any time after the expiration of twelve months from granting the letters of administration, petition the county court, setting forth his claim, whereupon it shall be the duty of the said court to grant a rule on the administrator, administratrix, or administrators, (as the case may be,) to make the distribution agreeably to law, but no administrator, administratrix, or administrators, shall be compelled to make distribution at any time, until bond and security be given by the person entitled to distribution, to refund a due proportion of any debts or demands which may afterward appear against the intestate, and the costs attendant on the recovery of such debt.

Persons entitled to distribution, to give bond and security.

SEC. 2. *And be it further enacted,* That any person entitled to a legacy, or any estate by will, shall be entitled to the provisions of the foregoing section, as in case of administrators: *Provided,* that nothing herein contained shall be so construed as to compel any distributee to give bond and security as aforesaid, for his or her distribution of the estate of any intestate after a final settlement shall have been made by the administrator or administratrix.

No distribution after settlement.

CHAPTER V.

An Act authorizing Executors and Administrators to make Titles to Real Estate, sold by their Testator or Intestate.—*Passed December 24, 1812.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That where any person owning lands or tenements, shall sell the same, and enter into bond or obligation to make titles thereto, and shall depart this life without having made titles, that then, and in that case, the person to whom such bond

Persons may petition the orphans' court for land titles.

or obligation was given, their executors or administrators may petition the orphans' court, of the county where probate of the will of such deceased person was taken, or letters of administration granted, to compel the executors or administrators to make titles agreeably to the bond, or obligation given by the decedant, and it shall be the duty of such court, to cause their clerk or register, to cause notice of such petition to be published in some newspaper in this territory, once a month for at least three months, when the court may, if they find that the said contract was fairly made, order the executor or administrator to make titles as such, to the lands or tenements sold by their testator or intestate, and any executor or administrator refusing to comply with such order, may by such court be imprisoned for contempt, until they will comply with the order of such court: *Proivded*, That any person dissatisfied with the sentence, or order of the court on any petition as aforesaid, may take their appeal to the superior court, as in other testamentary cases.

CHAPTER VI.

An Act concerning Executors and Administrators, and for other purposes.—*Passed January* 21, 1814.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That from and after the passing of this act, it shall not be lawful for any executor, or administrator, to require any bond or note, payable and negotiable at the bank of the Mississippi, for property belonging to the estate of any testator or intestate, which such executor or administrator may sell at public sale by order of court.

[SEC. 2. Prohibits the said bank from collecting in a summary way, any note, &c. not *bona fide* the property of the said bank.]

CHAPTER VII.

An Act to amend the Act, entitled An Act concerning Wills and Testaments, the Settlement of Intestate Estates, and the duty of Executors, Administrators, and Guardians.—*Passed December* 23, 1815.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That if the commissioners appointed by the orphans' court of any county to receive and examine claims against the estate of any deceased person which has been by the orphans' court declared insolvent, shall fail to make their final report within the time limited by law, it shall be the duty of such orphans' court to make new appointments, or extend the time for the said commissioners to receive claims against such estate, and report thereon to such time as shall to such court seem reasonable and just, any thing in the law to which this is an amendment to the contrary notwithstanding.

In case of commissioners appointed, to examine claims against deceased persons failing to give notice in time.

Sec. 2. *And be it further enacted*, That all claims against the estates of deceased persons shall be presented to the executor or administrator within eighteen months after the same shall have accrued, or within eighteen months after the passing of this act, or within eighteen months after letters testamentary or letters of administration shall have been granted to said executor or administrator, and not after; and all claims not presented within the time aforesaid shall be for ever barred from a recovery. *Provided*, that the provisions of this section shall not extend to persons under age, feme covert, persons insane or *non compos mentis*, to debts contracted out of this territory, nor to claims of heirs or legatees claiming as such.

Claims against estates of deceased persons to be presented within eighteen months.

Proviso.

Sec. 3. *And be it further enacted*, That it shall be the duty of executors and administrators within two months after the granting letters testamentary or letters of administration to publish in some newspaper printed in this territory, a notice requiring all persons having claims against the estate of their testator or intestate, to exhibit the same within the time limited by law, or the same will be barred. Which notice shall state the time of granting such letters testamentary or letters of administration, and shall continue to be published once a week for six weeks.

Executors and administrators to give notice in newspaper, requiring persons having claims, &c.

Sec. 4. *And be it further enacted*, That no sale by executor or executrix, administrator or administratrix, shall commence before the hour of twelve o'clock on the day which he set apart for the same, nor continue longer than the hour of five o'clock in the afternoon of such day; but in case the time aforesaid shall be insufficient to complete the sale of such estate intended to be sold, such executors or administrators may on such event continue such sale from day to day by giving public notice thereof to the attending company, at the conclusion of the sale of each day, of such continuance; which continued sale shall commence and end within the hours aforesaid; and all such sales which may be commenced and held in any other manner than herein directed, are hereby declared to be null and void.

Sales by executors to commence at 12 o'clock, and end at 5.

May be continued by giving notice.

CHAPTER VIII.

An Act to authorize Executors and Administrators to sell Property of a Testator or Intestate, to complete Payment for Lands purchased of the United States. —*Passed December* 12, 1816.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That when any person shall have purchased land of the United States, and shall die before the payment therefor shall have been completed, his or her executor or administrator, executrix or administratrix, shall be, and he, she, or they are hereby authorized and empowered to sell by order of the orphans' court of the proper county, any property belonging to the estate of the deceased, giving public notice of the time and place of such sale, and upon such terms as shall be prescribed by the said orphans' court, and to apply the proceeds of such sale to the payment of said land: *Provided nevertheless*, That

Executors, &c. to pay for land purchased of U. S. by testator, &c.

Proviso.

this act shall not extend to cases where the testator or testatrix shall have made provision for the payment of such land, by his or her last will and testament.

Court may order land to be sold, if it cannot be paid for.

Sec. 2. *And be it further enacted*, That whenever any person shall have purchased land of the United States, and shall die before the payment thereof shall have been completed, and the personal property of said deceased, in the opinion of the orphans' court of the proper county, shall be insufficient to pay the balance due for said land, the said orphans' court are hereby vested with power and authority to grant to the executor or administrator, executrix or administratrix of said deceased, an order to sell said land so purchased of the United States, and unpaid for, upon such terms as in the opinion of the said court will be most advantageous for said estate, and to transfer to the purchaser or purchasers the certificates for the same.

Widow to have dower of incomplete titles.

Sec. 3. *And be it further enacted*, That whenever any person shall die, leaving a widow not satisfactorily provided for according to the act of the general assembly, passed on the twenty-second day of December, 1812, any land, the title of which shall be secured in conformity to the provisions of this act, shall be subject to the dower of the said widow, in the same manner as if the title had been complete at the time of the death of her husband.

CHAPTER IX.

An Act to compel Executors, Guardians, and Administrators, to settle their Accounts.—*Passed December* 12, 1816.

Executors, administrators, and guardian's remedy against, by attachment and jury.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That whenever any executor or executrix, administrator or administratrix, or guardian, shall be cited by the orphans' court of any county, or the chief justice thereof, to appear and settle their accounts as executor, administrator, or guardian, and shall fail to appear in obedience to the citation, the said orphans' court shall have power to issue an attachment against the person or persons so failing, in the same manner as the superior courts of this territory, might or could do, for disobedience to any order, judgment, or decree of said courts, and the said orphans' court shall have power to summon a jury of bystanders whenever it may be necessary, in order to carry into effect the power hereby granted.

CHAPTER X.

Extract from the Act concerning "Judicial Proceedings."—*Passed November* 21, 1818.

Sec. 2. *And be it further enacted*, That whenever it shall be made appear to the satisfaction of any county court, that the estate of any deceased person, or those who are entitled to inherit the same, will be less injured by a sale of the land, or part thereof, for the payment of debts, than by a sale of slaves, such court may, on the petition of any party interested, cause a citation to issue to all other interested persons, if in the county, or when that is not the case, by publication of notice in some paper for such interested party or parties to appear at the next county court, and show cause, if any they can, why sale of the land belonging to the estate so situated should not be ordered; and on the return of such citation, made known, or proof of the publication of the notice hereby required, at the next term of said court, if no cause be shown which the court deem sufficient, such court may order sale of such land, or whatever part thereof, as may be necessary, to satisfy debts, without a sale of negroes: and such sale shall vest in the purchaser the same title in law or equity, of which such decedent died possessed.

CHAPTER XI.

An Act supplementary to the Laws now in force, concerning Wills, Intestates, and Guardians.—*Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, whenever any person or persons die intestate, and leaving an estate not involved in debt so as to enforce a sale of any part of his or her estate, real or personal, it shall be the duty of the chief justice of the county court, or presiding magistrate, within three months after such estate is represented by the administrators or administratrix to be solvent, to appoint five commissioners, who, or a majority of them, within six months after their appointment, being first duly sworn to make division and distribution of such estate (reserving to the widow her dower in all cases,) among the legatees, or other legal representatives of the deceased; and such division and distribution shall be reduced to writing, and signed by said commissioners, and certified by the justices of the peace, or other magistrate, before whom said commissioners are sworn, and returned to the office of the clerk of the county court, or such other office as may be prescribed by law for that purpose, whose duty it shall be to record the same, as now required by law in cases of inventories: *Provided always*, that when such division and distribution cannot be equitably effected, without manifest injury to the legatees, or other legal representatives, then and in that case, such estate shall be exposed to public sale as heretofore.

CHAPTER XII.

Extracts from An Act, entitled " An Act to repeal in part and amend an Act, entitled An Act to regulate the Proceedings in the Courts of Law and Equity in this State."—*Passed June* 14, 1821.

NOTE.—The first six Sections will be found under title " Inferior Courts ;" the seventh, eighth, ninth, and tenth, under title " Wills ;" the eleventh Section, and the twenty-third and following Sections, under title " Inferior Courts."

Oath of administrator and executor.

SEC. 12. *And be it further enacted*, That before issuing letters testamentary or letters of administration with the will annexed, such executor or executrix, or administrator or administratrix with the will annexed, shall take and the judge shall administer the following oath, to wit: " You swear that the writing which has been admitted to be recorded as the last will of ——— contains the true last will of said ——— as far as you know or believe, and that you will well and truly execute said will according to law, and the directions thereof as far as the goods and chattels, rights and credits of the said ——— will extend, and that you will return a true inventory of all said goods, chattels, and credits, so far as they may come to your knowledge, a true account of sales, and your said administration as required by law." And before issuing any other letters of administration, such administrator or administratrix shall take, and the judge shall administer the following oath, viz. : " You swear that ——— deceased died without any lawful will as far as you know or believe, and that you will well and truly administer all and singular the goods, chattels, and credits of the said deceased, and return a true inventory thereof so far as they may come to your knowledge, and a just account of sales, and of your said administration as required by law." But where letters testamentary or of administration shall be granted on an authenticated copy of a will, and in such other cases as in the opinion of the judge may require a change in the form of the oath, the oath may be administered in such form as in the opinion of the judge is suitable to the nature of the case.

Executors and administrators' bond.

SEC. 13. *And be it further enacted*, That in all cases before granting letters testamentary, or of administration or guardianship, the executor or executrix, administrator or administratrix, or guardian shall enter into bond with at least two sufficient securities approved by the judge, payable to him and his successors in office, in such penalty as he may direct, which shall be at least equal to double the estimated value of the estate, with a condition as follows, viz. " The conditions of the above obligation are such, that whereas the above bounden ——— has been duly appointed administrator of the estate of ——— (or administratrix, or executor or executrix of the last will of ——— or guardian of ——— as the case may be) now if the said ——— shall well and truly perform all the duties which are or may be by law required of him (her or them) as such administrator (or administratrix, executor or executrix, or guardian, as the case may be) then the above obligation to be void, otherwise to remain in full force." Such bond shall not become void on the first recovery, and may be put in suit and prosecuted from time to time against all or any one or more of the obligors, in the name and at the cost of any person or persons injured by a breach thereof, until the whole penalty shall be recovered thereon.

Embezzlement, how tried.

SEC. 14. *And be it further enacted*, That any executor, executrix, administrator or administratrix, or guardian, may be ordered to give further security on complaint of any of his, her, or their securities, or of any of their representatives, or when there shall appear sufficient grounds to believe, that he, she, or they, are about to misapply, embezzle, or remove from the state the property committed to his, her, or their charge on proof of gross neglect in the performance of any of the duties on him, her, or them enjoined by law, or that his, her, or their securities have become insufficient, as well as for the causes heretofore specified, and on proof that such executor or executrix, administrator or administratrix, or guardian, has removed from the state, or otherwise endeavoured to elude the service of process on any such complaint, the same may be heard and determined, though the citation be not executed.

Executor, &c. may resign.

SEC. 15. *And be it further enacted*, That any executor, executrix, administrator or administratrix, or guardian, may by writing by him, or her, subscribed and delivered into the clerk's office, resign his or her authority, but in such cases he, she, or they, and his, her, or their securities shall be bound for all the offsets or effects which shall not have been duly administered or applied, or shall not be delivered to the successors respectively.

Security may be changed.

SEC. 16. *And be it further enacted*, That where new securities shall be ordered and taken of any executor, executrix, administrator, administratrix, or guardian, the judge may direct such alteration in the condition of the bond as the case may require, and may order the original securities to be discharged entirely, or from the time of taking such new security as to him shall seem proper.

Administration may be committed to sheriff.

SEC. 17. *And be it further enacted*, That where no one shall have been admitted and qualified as executor, executrix, administrator, or administratrix, within three months after the death of the deceased, or where the executorship or administration shall have become vacant, by death, resignation, or removal, the judge having jurisdiction of the case, may commit the administration to the sheriff or the coroner of the county, and (unless the judge shall otherwise order) no other oath, bond, or security, shall be necessary to be given, than the bond and oath of office already taken and given by such sheriff or coroner; but on his bond for the performance of the duties of his office, he and his securities shall be liable for his administration, and such bond may be sued, and judgment from time to time recovered thereon, in the same manner as is, or may be provided by law, in case of other bonds of executors, administrators, and guardians. The administration so committed to any sheriff or coroner, may at any time be revoked, on the application of any of the executors, kindred, or creditors of the deceased, and the executor permitted to qualify, or another administrator be appointed. During any contest about the validity of a will, the infancy or absence of the executor or administrator, and in such other cases not otherwise provided for, as may so require, the judge may appoint an administrator or administratrix, with such limited authority as the case may require, and when the necessity of the case may require, such administrations may be granted or revoked forthwith without any citation.

Executors appointed by other states may sue.

SEC. 18. *And be it further enacted*, That when letters testamentary, probate of a will, or letters of administration on the estate of any testator having no known place of residence in this state at the time of his or her death, shall have been duly obtained in any other state, territory, or country, and no personal representative of such testator or intestate shall have been duly appointed and qualified in this state, the personal representative or representatives, so appointed out of this state, may maintain any action, demand and receive any debt, and shall be entitled to all the rights and privileges which he, she, or they could have done, or would have done, if duly appointed and qualified within this state: *Provided always*, that before the rendition of judgment in any such action, there shall be produced in court where the same is pending, a copy of such letters testamentary, probate, or letters of administration, duly authenticated according to the laws of the United States in such cases, and the certificate of the clerk of the county court of some county in this state, that such certificate has been duly recorded in his office, and in default of such proof, the court may direct a nonsuit to be entered: *And provided further*, that such foreign representative or representatives shall not be entitled to receive any money so recovered, or any money due to him, her, or them, in such right, until the copy of the letters testamentary, probate, or letters of administration shall have been recorded as aforesaid, and then shall have been deposited in the clerk's office of the county court of the county where such judgment shall have been recovered, or of the county in which the debtor or debtors may reside, a bond in such penalty as the judge of said county court may direct, payable to him and his successors in office, and with such obligors thereto as he may approve, conditioned that such representative or representatives shall faithfully administer and apply according to law all moneys and effects received by him, her, or them in right of such testator or intestate, from any person or persons in this state, and on such bonds, suits may be brought and judgment recovered, as in other cases.

Suit continued in name of deceased executor, &c.

SEC. 19. *And be it further enacted*, That where any suit may have been commenced on behalf of or against the personal representative or representatives of any testator or intestate, the same may be prosecuted by, or against any person or persons who may afterward succeed to the administration and executorship, such person or persons may, at any time, be made parties on motion, and the cause shall proceed in the same manner, and judgment therein be in all respects as effectual, as if the same were prosecuted by or against the parties originally named: where any personal representative or guardian shall be displaced, all moneys due to him or her in such right, by execution or otherwise, shall be paid to his or her successor.

Bonds shall inure to judge.

SEC. 20. *And be it further enacted*, That all bonds and recognizances which may have been given or made payable to the justices of any county court, or orphans' court, or to the chief justice of such courts heretofore established by the laws of the Mississippi territory, or of the Alabama territory, or of this state, shall inure and be payable to the judge of the county court of such county, and his successors in office, for the use of the county, and suits may be prosecuted, and judgments recovered thereon, in the name of such judge or any of his successors, against all or any one or more of the obligors to any such bond.

Proceedings in case of insolvency.

SEC. 21. *And be it further enacted*, That when the estate of any testator or intestate shall be reported insolvent, it shall be the duty of the judge of the county court to audit and determine on the accounts relative thereto, according to the regulations heretofore prescribed for commissioners in such cases. But in cases where the whole value of the assets, according to the inventory and appraisement, shall appear to be less than one hundred and fifty dollars, it shall not be necessary (unless special cause therefor appear,) to publish the notification in any gazette. Creditors may in all cases file the evidence of their claims in the clerk's office, and when in the opinion of the judge the case so require, he may appoint commissioners as heretofore. The notification in such cases shall set forth the times and place appointed for the meeting of the commissioners. Commissioners may be appointed, and if any of them refuse or fail to act, others may be appointed in their stead, at any time before the report shall be agreed on: the commissioners within three days before the time of their first meeting, shall apply at the clerk's office for such evidences of claims as may have been there filed, and shall return the same to the office within ten days after making up their report, or after the last time appointed for their meeting. Exceptions to the report shall be heard and determined by the judge. If no report be returned by them, as required by the order, the judge shall appoint some time, not more than four weeks distant, at which he will examine and decide on the case, and notification thereof shall be made by the clerk, by advertisement at the door of the court-house.

Inventory to be returned.

SEC. 22. *And be it further enacted*, That executors and administrators within three months after their appointment, shall return to the clerk's office a full inventory of all the goods and chattels, rights of, and debts due or accruing to the testator or intestate, at the time of his death, which have come to their possession or knowledge, setting forth the times at which debts are due, and whether due by open account, promissory note, or bond; and within three months after such sale, shall in like manner return an account thereof. Inventories and accounts of sales shall be subscribed and sworn to by the executor or administrator returning the same, before the judge, clerk, or some justice of the peace.

CHAPTER XIII.

An Act to authorize Executors, Administrators, and Guardians, to relinquish Lands under the Act of Congress, passed 2d day of March, 1821, and for other purposes.—*Passed June* 14, 1821.

Executors, &c. authorized to relinquish.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall and may be lawful for executors, administrators, or guardians, to enter a relinquishment of the lands of their testator or intestate, or wards, upon which a part only of the purchase money has been paid, and apply the money paid thereon as the act of congress of the second of March, eighteen hundred and twenty-one, directs.

Authorized to transfer certificates.

SEC. 2. *And be it further enacted,* That it shall be lawful for executors, administrators, and guardians, to transfer certificates of land whereon a part only of the payments have been made, for the purpose of being relinquished under the said act by the assignee, which transfer shall pass the estate in such land for that purpose, only *provided*, that previous to such transfer, an order of the justice of the county court be made, directing a sale and transfer of such land, *Provided also*, that a bond shall be given with good security, to be approved by said justices, conditioned for the faithful administration of the proceeds according to law.

Proviso.

Proviso.

Executors declared proper representatives.

SEC. 3. *And be it further enacted,* That the administrators, executors, and guardians aforesaid, shall be, and hereby are made and declared to be the proper representative of the estate of deceased persons, to obtain the extended credit allowed by the provisions of said act of congress.

CHAPTER XIV.

A list of Private Acts of the Territory and State of Alabama, relating to Executors, Administrators, and Guardians.

An Act to authorize the Administrators of William Gillam, deceased, to sell Real Estate.—*Passed February* 13, 1818.

An Act to authorize the Administrators of James Allsup, deceased, to sell Real Estate.—*Passed February* 13, 1818.

An Act to authorize the Administratrix and Administrator of Henry Cannon, deceased, to sell certain Real Estate.—*Passed November* 16, 1818.

An Act to authorize the Administratrix and Administrator of Daniel W. Michaux, deceased, to sell certain Real Estate therein named.—*Passed November* 18, 1819.

An Act to authorize the Administrator of Thomas Garretson, deceased, to sell certain Real Estate.—*Passed November* 18, 1819.

An Act to authorize the Administratrix and Administrators of James Hargrove, deceased, to sell a certain Quarter Section of Land.—*Passed December*, 1819.

An Act to authorize the Administratrix of Josiah Wood, deceased, and Edmund I. Baily, to sell certain Real Estate.—*Passed December*, 1819.

An Act authorizing William Russell, senior, and Joshua Gotcher, to sell certain Lands therein mentioned.—*Passed November*, 1819.

An Act to authorize the Administrator and Administratrix of John Childress, deceased, to sell Real Estate.—*Passed December*, 1819.

An Act to authorize John Smith, senior, to make a Title to certain Land therein named.—*Passed December*, 1819.

An Act to authorize Alle Kyle to make Title to Jonathan Sanderlyn, to a certain Tract of Land.—*Passed November*, 1811.

An Act to authorize Jeremiah Austil, to dispose of the Lands of David Files, deceased.—*Passed December* 7, 1820.

An Act to authorize the Executrix of William Baldwin, deceased, to sell and convey certain Real Estate.—*Passed November* 30, 1820.

An Act to authorize the Administrator of Thomas Ragland, deceased, to sell and transfer certain Certificates of Land therein named.—*Passed December* 12, 1820.

An Act to authorize S. B. Shields, to sell certain Lands therein named.—*Passed December* 7, 1820.

An Act to authorize the persons therein named, to sell and transfer certain Certificates of Land.—*Passed December* 20, 1820.
The persons "named" are Green K. Hubbard, Stephen C. Richardson, and Sarah T. Richardson.

An Act to repeal, &c. and for other purposes.—*Passed June* 16, 1821.
This act is about Roads, and the town of Claiborne. The "other purposes" are to authorize the Administrator or Administratrix of Matthew Gayle, of Lawrence Wood, and of William A. Rogers, deceased, to sell Land and transfer Certificates.

An Act to authorize the Executor of Joseph Philips, deceased, to sell and transfer certain Certificates of Land therein named.—*Passed December* 6, 1821.

An Act to authorize Richard Raspier, Administrator of Claiborne Mur, deceased, to sell a certain Lot of Land.—*Passed November* 27, 1820.

An Act to authorize the Administrator and Administratrix of Thomas Tolbert, to sell and convey certain Real Estate.—*Passed November* 27, 1821.

An Act to authorize the Administrators of the late Benjamin C. Benham, deceased, of Limestone County, to sell a Tract of Land therein designated, and for other purposes.—*Passed November* 27, 1821.
It also authorizes the Administrator of William A. Rogers, late of Madison County, to sell at public sale, all, or so much of the estate that the said Rogers died seized and possessed of, which he purchased of Samuel Dixon.—*Passed November* 27, 1821.

An Act authorizing Abraham Skidmore and Ashel Akers, to sell certain Real Estate.—*Passed December 17, 1821.*

An Act to authorize the Administrator of David Dalton, deceased, to sell certain Lots therein named.—*Passed November 19, 1821.*

An Act authorizing the Administrators of the estate of Robert Morrow, deceased, to sell certain Real Estate therein named.—*Passed November 28, 1821.*

An Act legalizing the sales of certain Lands, viz. those of D. W. Michaux, and authorizing the Administrator of J. H. Bell, and the Administrator and Administratrix of John Cowen, to sell Lands.—*Passed December,* 1821.

An Act to authorize the Administrator of John Watt, deceased, to sell certain Real Estate therein named.—*Passed December,* 1821.

* An Act in relation to the Estate of James White, deceased.—*Passed December* 31, 1822.

* An Act to authorize Rosanna Lambkin and Elijah Hogan, to convey to Isaac Jackson a certain Tract of Land therein named.—*Passed December* 14, 1822.

* An Act to authorize the Administrator and Administratrix of Davis H. Mayhew, deceased, to sell Real Estate.—*Passed December* 31, 1822.

* An Act to authorize the Administrator of John Turrentine, and the Administrator and Administratrix of William Lambkin, deceased, to sell certain Tracts of Land therein designated.—*Passed December* 31, 1822.

* An Act for the Benefit of Sarah Strother, Administratrix of George H. Strother, deceased, and to authorize her to sell certain Real Estate therein mentioned.—*Passed December* 31, 1822.

* An Act to authorize the Administrator and Administratrix of John Ellis, to sell and convey certain Real Estate.—*Passed December* 12, 1822.

* An Act to authorize William Breedlove, to sell certain Real Estate therein named, and for other purposes.—*Passed January* 1, 1823.

* An Act to authorize the Administrators of John Lucas, and the administrators of John Waugh, deceased, to sell Real Estate.—*Passed December* 31, 1822.

* An Act authorizing the legal Representatives of Robert H. Draughan, deceased, to dispose of certain Real Estate therein named.—*Passed January* 1, 1823.

* An Act authorizing John R. B. Eldridge to sell certain Slaves therein mentioned.—*Passed December* 30, 1823.

* An Act authorizing the Administrators of the estate of William Nelson, deceased, to sell certain Lands therein mentioned.—*Passed December* 12, 1822.

CHAPTER XV.

An Act concerning the Judges of the County Court.—*Passed December* 12, 1822.

Judge to give notice of the time of settlement to guardians.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That hereafter it shall be the duty of the judges of the county court, in their respective counties, to give the notice now required by law to be given by executors, administrators, or guardians, of the term of the said court at which any executor, administrator, or guardian may be required by said judge to present for allowance his settlement, or account current, made as prescribed by law, in vacation.

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* These Acts merely private and temporary.

SEC. 2. *And be it further enacted*, That the said judge be, and he is hereby authorized to render judgment against any executor, administrator, or guardian, for whom he is required by this act to give notice, in favour of the printer, for any sum which said judge may think reasonable for publication.

Judge to render judgment in favour of printer.

CHAPTER XVI.

An Act to authorize Administrators to Sell Land belonging to the Estate of their Intestate, to which a complete Title has not been obtained.—*Passed December 27, 1822.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, it shall and may be lawful for an administrator of any deceased intestate, or the executor of any deceased testator, who has not power by the will of the testator to sell real estate for the purpose of paying debts, or to make more equal distribution among the heirs, devisees, or legatees, to file a petition in the county court of the county in which letters of administration or letters testamentary have been granted, setting forth that the personal estate of his intestate or testator (as the case may be,) is not sufficient for the payment of the just debts of such intestate or testator, or that the real estate of such testator or intestate cannot be equally, fairly, and beneficially divided among the heirs or devisees of such intestate or testator, without a sale of the real estate, setting out and particularly describing in such petition, the estate proposed to be sold, and the names of the heirs or devisees of such intestate or testator, and particularly stating which are of age and which are infants or *feme covert*.

Administrator or executor may petition county court.

SEC. 2. *And be it further enacted*, That upon the filing of such petition in open court, it shall be the duty of the court to order citations to all the heirs or devisees who are of full age, and to the husband of such as are *feme covert*, requiring them to appear on a particular day mentioned therein, at a regular or adjourned term of said court, and answer said petition: and it shall also be the duty of said court, forthwith to appoint guardians to such of the heirs or devisees as are infants, to answer and defend against said petition; which guardian shall not be the petitioner, or of heir to the petitioner.

Court issue citations to heirs.

To appoint guardians.

SEC. 3. *And be it further enacted*, That it shall be the duty of the guardian or guardians appointed as aforesaid, to deny all the allegations contained in said petition, without being verified by oath: and if necessary to employ counsel, to defend for his ward or wards.

Guardians to deny allegations; may employ counsel.

SEC. 4. *And be it further enacted*, That said court shall not decree or order sale of the real estate described in such petition, where the allegations are denied by the answer; unless he be satisfied by proof to be taken by deposition as in chancery cases, and filed in the cause: And where a sale of the estate

Court to appoint commissioners to sell estate.

shall be ordered or decreed by the court, commissioners shall be appointed in the order or decree, with directions to sell the estate, either for money or on credit, as may be most just and equitable; and to report to said court at the time limited in the order or decree.

Petitioner to enter into bond.

SEC. 5. *And be it further enacted*, That the petitioner shall not receive the bonds or money returned and reported by the commissioners, until he shall enter into bond and sufficient security, to be approved by the court, conditioned for the faithful payment and application of the money arising from such sale, according to the final decree.

Court to render decree.

Commissioners to convey.

SEC. 6. *And be it further enacted*, That the said court shall, upon the coming in of the report of the commissioners, render a final decree in the cause; and if the terms of the sale have been complied with by the purchaser of the estate, the commissioners shall be directed by such final decree to convey the estate sold to the purchaser.

Petitioner to pay costs.

SEC. 7. *And be it further enacted*, That whenever the court shall, upon a full hearing of the cause, decide that the estate shall not be sold, the judge shall dismiss the petition at the costs of the petitioner, to be levied of his own estate.

CHAPTER XVII.

An Act authorizing George Cox, Administrator of Benjamin Cox, deceased, to sell and transfer certain Real Estate.—*Passed December* 31, 1823.

Certain town lots, &c. may be sold and transferred.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That George Cox, administrator of the estate of Benjamin Cox, deceased, late of the county of Tuskaloosa, be, and he is hereby authorized and empowered to sell and transfer the following lots, to wit: one lot in the town of Huntsville, Madison County, fronting on Clinton-street, containing, according to the survey of the said town, two acres, and one hundred and thirty-one perches, belonging to the said estate; also, all the right, title, and interest held by said decedent in his lifetime, to lots numbered six, two hundred and eighty-four, two hundred and seventy-six, three hundred and twenty-three, four hundred and seventy-seven, four hundred and seventy-eight, four hundred and seventy-nine, four hundred and eighty, four hundred and eighty-one, four hundred and eighty-two. four hundred and eighty-three, four hundred and eighty-four, three hundred and seventy-one, three hundred and seventy-two, three hundred and seventy-three, three hundred and seventy-four, four hundred and. one, four hundred and two, four hundred and three, four hundred and four, lying in the lower part of the town of Tuskaloosa, on such terms and conditions as the said administrator may deem most advisable and advantageous to the interest of the said estate: *Provided*, that twenty days notice shall be given in the paper published in the town of Tuskaloosa, previous to the sale.

Proviso.

Administator to enter into bond.

SEC. 2. *And be it further enacted*, That the said administrator shall, before such sale and transfer, enter into bond with sufficient security, payable to the judge of Tuskaloosa county for the time being, and his successors in office, in such sum as said judge may require, for the proper distribution of the money arising from the sale of the aforesaid lots, agreeably to the existing laws regulating the distribution of personal estates of deceased persons.

SEC. 3. *And be it further enacted,* That this act shall commence and be in force, from and after the passage thereof. To commence.

FEES.—1807.

CHAPTER I.

An Act establishing the Fees of the several Officers therein named, and for other purposes.—*Passed February* 6, 1807.

NOTE.—The first Section of this Act provides for the Fees of the Clerk of the Supreme Court, which was afterward abolished, and also for the Fees of other Public Functionaries: but inasmuch as the Act of 1812 directs that the Clerks, Sheriffs, and other persons therein after named, should be entitled to the Fees therein specified, and *no more*, it is considered that the said first Section is virtually repealed by the Act of 1812.

SEC. 2. *And be it further enacted,* That a sheet of writing within the meaning of this act, shall contain one hundred words.

SEC. 3. *And be it further enacted,* That if any officer before named shall take greater fees than are herein before allowed him for any service to be done in his office, or if such officer shall charge, demand, or take any fees herein before ascertained, for services not actually rendered, every officer so offending shall forfeit and pay to the party injured fifty dollars, to be recovered in any court having competent jurisdiction. Penalty for extortion.

[SEC. 4. *And be it further enacted,* That the judges of the supreme, superior, and circuit courts of this territory, shall make such allowance from time to time, to their officers, as they may think reasonable, for all public services by them rendered; *Provided* the same does not exceed, per year, the sum of one hundred dollars to each officer; which allowances shall be certified to the auditor of public accounts, and he shall be thereupon authorized to issue his warrant on the territorial treasurer for the amount so allowed and certified.] Allowance to officers of supreme, superior, and circuit courts.

SEC. 5. *And be it further enacted,* That when any person or persons shall be presented, indicted, or prosecuted, for any capital or inferior offence, and shall be discharged or convicted, and the court shall not direct the costs to be taxed on the prosecutor, or paid by the person convicted, the clerk and sheriff of said court shall be entitled to no more fees for the same, but it shall be deemed to be included in their public services. No fees allowed in a certain case.

[SEC. 6. *And be it further enacted,* That there shall be allowed by the county courts to their clerks respectively, for all public services, to wit: for entering and issuing copies of orders for appointing surveyors of the highways, appointing overseers of the poor, issuing *venire facias* for summoning of juries, entering orders for the allowance of accounts against the county, recording and certifying the same, and for all other public services for Allowance to officers of the county courts.

which no particular fees are allowed, a sum not exceeding fifty dollars per year, to be paid by the county.]

To sheriffs.

[Sec. 7. *And be it further enacted*, That there shall be allowed by the justices of the county courts to the sheriffs of such counties respectively, for all public services, to wit: for summoning grand juries, attending the orphans' court, holding elections, advertising and selling estrays, serving all public orders of the county court, and for all other public services for which no particular fees are allowed, a sum not exceeding fifty dollars per year, to be paid by the county.]

Clerks to issue execution, where fees are not paid.

Sec. 8. *And be it further enacted*, That it shall and may be lawful for the clerks of the several courts within this territory, when suits are determined, and the fees not paid by the party from whom they are due, to make out executions, directed to the sheriff of the county where the party resides, and it shall and may be lawful for the registers of the several orphans' courts to make out executions in like manner for the fees that may become due the officers of said courts, by virtue of this act, directed to the sheriff of the proper county, and the said sheriff shall levy the same, by virtue of said execution as in other cases, and to the said execution shall be annexed a copy of the bill of costs of the fees on which such execution shall issue, wrote in words at length, without any abbreviation whatever; and all executions issuing without the copy of such bill of costs, shall be deemed illegal, and no sheriff shall serve or execute the same.

Suit to be dismissed, if security be not given for costs,

Sec. 9. *And be it further enacted*, That every action at common law, or suit in chancery, commenced in the name of any person residing out of this territory, shall be dismissed if security be not given with the clerk of the court from whence the process shall issue, or wherein it shall be depending, within sixty days after notice shall, at any time during such non-residence, have been given to the plaintiff or his attorney, by some person interested, that such is required for the payment of the costs which may be awarded to the defendant, and also of the fees that is or may become due to the officers of the court; and after security shall be so given, and the fees not paid at the time the same becomes due, it shall and may be lawful for the court in which the cause was commenced, to enter up judgment on motion against such security, and award execution accordingly.

and execution awarded.

Constables to attend circuit courts.

Sec. 10. *And be it further enacted*, That it shall be the duty of the sheriff to summon three constables to attend each circuit court, who shall attend accordingly, or pay a fine at the discretion of the said court, not exceeding ten dollars.

Repealing clause.

Sec. 11. *And be it further enacted*, That all acts or parts of acts, heretofore passed, and coming within the purview or meaning of this act, be, and the same are hereby repealed.

Note.—The fourth, sixth, and seventh sections of this Act were repealed by an Act passed in December, 1809, entitled "An Act to amend an Act entitled an Act establishing the Fees of several Officers therein named, and for other purposes;" which Act was itself repealed without reservation in December, 1812. Provisions on the subject mentioned in the ninth section, (viz. security for costs in the case of non-residents,) will also be found under title of "Judicial Proceedings at Common Law."

CHAPTER II.

An Act concerning the Clerks of Courts, and to reduce into one the several Laws regulating Officers' Fees, and more particularly to define the same.—*Passed December* 24, 1812.

NOTE.—The first nine sections of this Act will be found under title "Public Officers," Chapter 5.

SEC. 10. *And be it further enacted,* That the clerks, sheriffs, and other officers, and persons hereafter named, shall be entitled to demand and receive for the services herein after mentioned, the fees thereto respectively annexed, and no more, to be paid, taxed, and collected in manner herein after directed, that is to say:

TO CLERKS OF SUPERIOR COURTS.

	Cents.
For every writ, other than those herein after particularly specified, with the endorsement, - -	50
A copy thereof, - - - - - -	18¾
Entering the sheriff's return, or a copy thereof, -	12½
Copy of a bail bond, - - - - -	25
Docketing every cause, to be charged but once, -	12½
Entering the appearance of any party, by attorney or personally, to be charged but once, - -	12½
For entering special bail in court, - - -	18¾
For a bail piece, if required, - - -	12½
For filing declaration, plea, or demurrer, or other pleadings, for each, - - - - -	6¼
For entering every rule on the rule docket, at the request of the party, but not otherwise, - -	6¼
For every order made in court, not otherwise provided for, - - - - - - -	25
For a copy thereof, if required, - - - -	18
For every trial, swearing jury and witnesses, and recording a general verdict, - - -	62½
For every trial where there is a special verdict, case agreed, or points reserved, and swearing jury and witnesses, - - - - - -	75
For entering up judgment, or a copy thereof, -	18¾
For every scire facias, and recording the return, -	50
For every execution fi. fa., or ca. sa., and recording the return, - - - - - -	50
For every writ of elegit, - - - - -	30
For recording the return thereof, for every hundred words, - - - - - - -	15
For a copy of an execution and return, - -	25
For recording the award of arbitrators, viewers, auditors, &c. for every hundred words, - -	15
For every order to witness for attendance, and copy thereof, to be charged to the party for whom he is summoned, - - - - - -	25

For issuing an attachment thereon, for non-payment,	18¾
For taking bonds for injunctions, certiorari, supersedeas, or writ of error, - - - - - -	25
For a copy thereof, if required, - - - -	20
For filing such bond, - - - -	10
For recording the acknowledgment of satisfaction of a judgment, - - - - - -	12½
For a summons for witness or witnesses, - -	25
For administering an oath in court not relating to the trial of a suit there depending, and certifying the same, - - - - - - -	25
For the copy of an account, for every hundred words,	12½
For filing every attachment granted by a judge or justice, - - - - - -	10
For each summons for garnishee or garnishees, on such attachment, - - - - -	18¾
For swearing and taking the examination of a garnishee or garnishees, or any attachment and entering the same on record, - - - - -	25
For every subpœna in chancery, or writ of injunction,	50
For filing each bill, answer, or other pleadings in chancery, - - - - - -	12½
For an order to advertise, or order of survey, and copy thereof, - - - - - -	37½
For recording a connexion of surveys in a surveyor's report, for every survey laid down in such connexion, with its references, - - -	25
For a copy thereof, each, - - - -	12½
For recording the report of a surveyor, for every hundred words - - - - -	12½
For a copy thereof, for every hundred words, -	12½
For a commission to take depositions, - -	50
For a copy of interrogatories to accompany such commission, for every hundred words, - -	12½
For filing the depositions of each party - -	12½
For entering a decree in chancery, at large, for every hundred words, - - - - -	20
For every writ *de idiota inquirenda*, or writ of lunacy,	25
For recording the return, and inquest thereon, for every hundred words - - - - - -	15
For every writ of *ad quod damnum*, or other writ in the nature thereof, - - - -	50
For recording the return, and inquest thereon, for every hundred words, - - - - -	15
For every writ of *certiorari*, writ of error, prohibition, *mandamus*, or any other writ in the nature thereof, - - - - - - -	50
For filing the same with the return - - -	10
For making a complete record of any cause, after final judgment, for every hundred words, or copy of the same - - - - - - -	12½

For copy of any paper or record, not herein otherwise provided for, for every hundred words,	$ 12½
For a search out of term time, for any thing above a year's standing, where no copy is required, and for reading the same,	12½
For taxing costs, or copy thereof,	25
For every necessary certificate to which the seal of office is required, and affixing seal,	50
Taking any and every bond,	50
For every necessary certificate not otherwise provided for, or copy thereof,	12½
For every order of continuance in court,	6¼
For entering, finding of indictment, or filing information,	25
For arraigning prisoner, and entering plea,	50
For taking recognizance,	50
For swearing and entering grand juries, issuing summonses on presentments, and informations, and for witnesses, swearing juries, and witness on presentments, and indictment, where the party is not convicted, taking recognizance of prosecutions, witnesses, and defendants, certifying allowances to the sheriffs, constables, and guards, and for all public services not herein otherwise provided for, to be paid from the public treasury on certificates of the court, to which such clerk shall belong, a sum per annum not exceeding	50 00

TO THE CLERKS OF THE COUNTY COURTS.

For the like services by them performed, the same fees as are herein allowed to the clerks of the superior courts.	
For recording the probate of any will, or testament, and for letters testamentary thereon	1 00
For recording a will, testament, or codicil, for every hundred words,	12½
For administering oath to executors, or administrators, and taking bond, and recording the same,	1 00
For letters of administration, and order granting the same,	1 00
For order appointing appraisers of an estate, and for copy,	25
For recording an inventory, appraisement, for executors, administrators, or guardians' accounts, for every hundred words,	12½
For order for tavern license, and taking bond,	50
For a copy of tavern rates,	25
For issuing a marriage license and taking bond,	1 00
For recording certificate of marriage, to be paid when license is issued,	50
For recording certificate of estray, and copy for advertising at the court-house,	50

For an order binding out apprentice, and copy of the same,	$	50
For recording indenture of apprenticeship,		50
For filing appeal from a justice of the peace, docketing same, and all services incident thereto, in court,		50
For recording a deed of bargain, and sale of lands, slaves, or other personal estate, whether by mortgage or not, and every certificate thereon, for every hundred words,		12½
For issuing a commission for taking the privy examination of a feme covert, &c. to a deed for lands,		50
For recording the same, with the return thereof, for every hundred words,		12½
For recording a letter of attorney with the certificate thereon, or for a copy thereof, for every hundred words,		12½
For recording any bond, note, articles of agreement, or any other writing not herein provided for, for every hundred words,		12½
For a copy thereof, for every hundred words,		12½
For entering and copying orders for viewing, and opening roads, for orders appointing overseers of roads, and copying the same, for orders for appointing overseers of the poor, and copying the same, and for all other public services, which no particular fee is herein specified or allowed to be paid from the public treasury, out of the county funds, on a certificate of the court to which the clerk belongs, a sum not exceeding per annum	25	00

Provided, That no fee shall be allowed for issuing *scire facias*, against defaulting jurors, where they may be excused by the *court.**

TO THE SHERIFFS.

For levying an attachment on the estate of an absconding debtor,	1	50
For summoning garnishee,		50
For selling property attached, the same as for selling on a *fieri facias*,		
For serving *capias ad respondendum* or other mesne process,	1	00
For returning writ in sheriff's office,		12½
For returning capias, or other mesne process,		12½
For leaving copy of writ with defendant,		25
For taking bail bond, assignment thereof, and returning the same,		50
For summoning each witness,		50
For empannelling a jury in each cause, where a jury is sworn,		25

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* See the ninth chapter under this title, for the new fees for similar services.

For executing a *habere facias possessionem*,	$2 00
For making a deed to purchaser of real estate, sold or executed,	2 00
For removing a prisoner, for every mile going and returning,	5
For every day's attendance with such prisoner on the judge, in vacation,	2 00
For committing a prisoner to jail, or releasement,	50
For victualling prisoner per day,	40
For serving a declaration in ejectment, and copy thereof, on each tenant in possession,	1 00
For levying *fieri facias*, and making money thereon, for the first hundred dollars five per cent. for all sums above one hundred dollars and not exceeding two hundred dollars four per cent. for every hundred dollars over, in said execution, two and one half per cent.	
For levying *fieri facias* where sale is stayed by injunction, or supersedeas, or not sold for want of bidders, or other cause, one half of the above commissions.	
For serving ca. sa. on each defendant and commitment,	1 00
For making money on ca. sa. same commissions as are allowed on *fieri facias*.	
For executing a condemned person, and all incidents thereto,	10 00
For putting a person in pillory or stocks by order of court,	1 00
For whipping a free person by order of court,	2 00
For whipping a slave by order of court, to be paid by the owner,	1 00
For summoning a jury upon any inquisition in the county, and attending on said jury, and taking inquest, per day,	2 00
For serving subpœna in chancery, for each defendant,	50
Returning same,	12½
For serving *scire facias* on each defendant,	50
For serving every person with a summons not herein provided for,	50
For serving an attachment for contempt, and returning same	1 00
For victualling a runaway slave, in jail, per day,	40
For advertising such slave,	1 00
For advertising and selling an estray,	1 00
For taking a bond, in virtue of his office, other than is herein provided for,	50
For taking bonds of every kind,	50
For empannelling grand juries, advertising and attending elections, serving all public orders, of all courts in his county, and for all other public services, not herein otherwise particularly provided for, a sum not exceeding per annum, to be allowed, and certified by the superior court, and paid out of the public treasury,	50 00

Provided, That no fee shall be allowed for *scire facias* against defaulting jurors, where the same may be excused by the court.

TO THE CORONER.

For taking an inquisition on a dead body,	$10 00
For all services done by him, the same fees as are allowed to sheriffs for similar services.	

TO CONSTABLES.

For serving a warrant in civil case,	50
For summoning each witness,	25
For serving a peace, or search warrant,	1 00
For carrying a criminal to jail, per mile,	10
For levying an attachment,	50
For summoning a garnishee,	50
For making money on execution,	75
For conveying a debtor to jail,	75
For whipping a slave (to be paid by the owner) by order of a justice of the peace,	1 00
For summoning a coroner's inquest, to be paid by the territory,	2 00
For attending court, when summoned by the sheriff, to be paid by the territory, per day,	1 00

TO JUSTICES OF THE PEACE.

For celebrating the rites of matrimony, and certificate thereof,	2 00
For a warrant for apprehending a criminal,	50
For a search or peace warrant,	50
For a mittimus or recognizance,	50
For a warrant in civil cases, and proceeding thereon to judgment,	50
For a warrant in *qui tam* cases, and proceeding thereon to judgment,	1 00
For every subpœna for witnesses,	25
For an execution,	25
For an attachment, taking bond, and affidavit,	1 25
For summons for garnishee, and taking examination,	50
For judgment and order of sale on attachment,	25
For hue and cry,	50
For each appeal, including bond, and certifying proceedings,	1 00
For transcript of a record, when required,	25
For administering an oath and certifying the same,	25
For taking depositions by virtue of a dedimus potestatem, for every hundred words,	25
For every necessary certificate, not otherwise provided for,	25

For posting an estray, or estrays, the whole fee for each service	$	50

ONE OF THE JUSTICES OF THE QUORUM.

For the like services by them performed, the same fees as are herein allowed to the justices of the peace.

FOR THE CHIEF JUSTICE OF THE ORPHANS' COURT.

For examining, stating, and reporting each account of executors, administrators, or guardians,	1	00
For sheet, more than one, contained in each account,		50
For each order for advertising, issuing citations, and other notice or process,		25
For appointing a guardian to a minor in vacation,	1	00
For appointing a special administrator to collect the effects of a deceased person in vacation,	1	00

TO NOTARIES PUBLIC.

For protesting any bill, registering and seal,	1	50
For attesting letters of attorney, and seal,		50
For notarial affidavit to an account, or other writing and seal,		50
For registering a foreign bill protested, with certificates,		75
For registering a protest of a bill of exchange, or note for non-payment, or non-acceptance,		50
For every oath or affirmation, and seal,		50
For a notarial procuration, and seal,	1	00
For certifying of sales at auction, and seal,		75
For taking proof of debts, to be sent abroad, or proof and acknowledgment of letters of attorney, and seal,		75
For protest in insurance cases, and seal,	1	00

TO COUNSELLORS AND ATTORNEYS AT LAW.*

For prosecuting or defending a suit in the county court,	4	00
For like services in superior courts,	6	00
For prosecuting or defending a suit in chancery,	15	00
For prosecuting or defending a mixed or real action, where the title or bounds of lands are in question,	20	00

TO THE ATTORNEY GENERAL.

For the use of the Territory, as a part of the Public Revenue.

For every criminal prosecution by indictment, in cases of felony where the offender is convicted,	10	00

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* The act of January, 1814, which authorizes the superior courts to take cognizance of any sums above fifty dollars, provided that for sums under two hundred dollars, the attorney's fee should be the same as in the county court. See "Courts," Chapter 4.

For every prosecution for misdemeanor, where the offender is convicted, - - -	$ 5 00
For every action by original writ in behalf of the territory, for the recovery of a pecuniary penalty, where the defendant is convicted, - -	5 00

Fees to be taxed and allowed.

Sec. 11. *And be it further enacted*, That the fees herein allowed shall be taxed and allowed in the bill of costs in all suits where the services respectively shall have been rendered, but not more than one copy of any matter shall be allowed in the bill of costs, neither shall the clerk tax more than one attorney's fee in the bill of costs, although more attorneys than one may have been employed on the same side in the suit; and if any plaintiff or defendant, his or her attorney, shall take out copies of his or her own declaration or pleadings, or of his or her own papers in any cause, or of any common order made in such cause, the charge of such copies shall not be allowed in the bill of costs, although such party recover; and to the end that all persons chargeable with any of the fees aforesaid, may certainly know what the same was charged.

Fee book.

Sec. 12. *And be it further enacted*, That every clerk and sheriff shall keep a fee book, which, in the case of the clerk, shall be considered, and is hereby declared to be one of the books belonging to his office, and shall enter therein in a regular account to be opened for that purpose, every fee for each and every distinct service by him rendered, charging for every particular article in words at full length, in the same manner as the fees aforesaid; and the said fee book shall be free for the inspection of every person wishing to see the account of fees charged against him therein; and there shall be a regular index made to such book, pointing to the folio in which the respective accounts are contained, and no clerk or sheriff shall be allowed to take or demand any fee for any service by him performed, which shall not be justified by the charge made, and entered in his fee book as aforesaid.

Bill to be produced.

Sec. 13. *And be it further enacted*, That none of the fees herein before mentioned, shall be payable by any person whatsoever, until there be produced, or ready to be produced unto the person owing, or chargeable with the same, a bill, or account in writing, containing the particulars of such fees, signed by the clerk or officer to whom such fee shall be due, or by whom the same is chargeable, respectively; in which said bill or account shall be expressed in words at length, as the fees aforesaid are allowed by this act, every fee for which money shall be demanded; and in all cases where any person shall be presented or indicted by the grand jury, and shall be discharged from such presentment or indictment, neither the clerks nor sheriffs shall charge fees for the same, but it shall be deemed to be included in the public services; but if the party or parties so presented or indicted, shall be convicted, then and in such case the clerk and sheriff shall charge him, her, or them, with all fees accruing thereon.

Penalty for taking unlawful fees.

SEC. 14. *And be it further enacted*, That if any officer before named shall take greater or other fees than are herein before allowed them, for any service to be done in his office, or shall demand and take any of the fees aforesaid for services not actually rendered, the officer so offending shall forfeit and pay to the party injured, five times the sum so unlawfully demanded and taken, to be recovered before any court having cognizance of like sums.

[SEC. 15. Directed that the clerks should annually deliver to the sheriff, accounts of fees due to themselves or the sheriff, which the sheriff was required to collect, and authorized to make distress and sale of the goods of any person not paying.

[SEC. 16. Required the sheriff to account with the clerks for the same, on or before the first day of July in every year. Both sections were repealed on the 15th January, 1814.]

Acts repealed.

SEC. 17. *And be it further enacted*, That the act entitled "An Act to amend an Act, entitled 'An Act establishing the Fees of the several Officers therein named, and for other purposes;'" the tenth section of the Act concerning counsel and attorneys at law; and also all other acts and parts of acts within the purview of this act, shall be, and the same are hereby repealed. This act shall commence and be in force from and after the passage thereof.

CHAPTER III.

Extracts from the Act to Revise, Consolidate, &c. the several Acts relating to Justices of the Peace, and Constables.—*Passed in December*, 1814.

SEC. 29. *And be it further enacted*, That the following fees shall be taxed, and allowed to justices of the quorum, and of the peace, and constables, in discharge of their duties, viz.:

TO JUSTICES.

Docketing each cause, - - - -	$ 6¼
Issuing each warrant, summons, subpœna, or notice,	25
Issuing attachment, - - - - -	1 00
Taking attachment, stay, or other bond, - -	25
Issuing commission to take deposition, - -	25
Taking deposition by commission, for each sheet,	25
Each appeal, with proceedings thereon, including bond, - - - - - - -	1 00
Each necessary certificate and affidavit, - -	25
Each mittimus or recognizance, - - -	50
Each judgment, - - - - - -	25
Each execution, - - - - - -	25

CONSTABLES.

Serving each warrant, - - - - -	50
Levying execution, and making the money thereon,	50
Serving subpœna, or notice, - - -	25

Taking bail bond for appearance, or bond for the forthcoming of property,	$ 50
Levying attachment,	75
Executing mittimus,	1 00
Whipping a slave by order of justice, to be paid by the owner,	1 00
Summoning coroner's inquest,	2 00
For each day's attendance at superior court, when summoned by the sheriff, one dollar, to be paid out of the territorial treasury,	1 00

NOTE.—See the Repealing Clause contained in this Act, under title "Justices of the Peace," chapter 7, section 32; and a note at the beginning of chapter 1, of the same title.

CHAPTER IV.

Extracts from "An Act to regulate Judicial Proceedings."—*Passed December 27, 1815.*

SEC. 3. *And be it further enacted*, That the clerks of the several courts of this territory shall endorse on all executions by them issued, the several items contained in the bill of costs, in intelligible words and figures.

SEC. 4. *And be it further enacted*, That the fee of attorney in each cause in the supreme court, shall be ten dollars; and hereafter the party prevailing in any suit which may be brought in any of the courts in this territory, shall be considered as entitled to the tax-fee allowed the attorney, and recover the same against the party cast in the suit.

CHAPTER V.

Extracts from "An Act concerning Stays on Executions, and regulating the Fees of certain Officers therein named."—*Passed December 22, 1816.*

Constable's fees.

SEC. 2. *And be it further enacted*, That the officers herein after named, shall be entitled to demand and receive for the services mentioned, the fees hereto respectively annexed, viz.:

TO CONSTABLES.

For serving each warrant, in civil cases,	$ 75
For levying execution, and making the money thereon, when the sum is less than twenty dollars,	75
and four per cent. commission on the amount of twenty dollars and upwards.	
For serving subpœnas and notice, on each witness,	50
For each bond required by law to be taken,	75
For levying attachment,	1 00
For executing mittimus,	1 00
For summoning a coroner's inquest, to be paid by the county,	2 00

For each day's attendance on the superior court, when summoned by the sheriff, to be paid out of the territorial treasury, - - - -	$1 00
For whipping a slave, by order of a justice of the peace, to be paid by the owner, - - -	1 00
For executing each criminal, search, or *qui tam* warrant,	1 00

CHAPTER VI.

An Act to amend the "Act concerning Surveyors."—*Passed December* 12, 1816.

Fees, &c. of county surveyor.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the following compensation shall be allowed, demanded, and taken by county surveyors, and no more, for services rendered by virtue of their offices, viz.:

For each day's attendance in making any survey, -	$5 00
For every single plat, and calculating contents, with certificate of survey annexed - - -	2 00
For every adjoining plat, with notes of reference, -	50
For every additional copy of a plat, with certificate of survey and notes of reference, where there are not more than three plats contained in said copy,	1 00
For every additional plat in said survey - -	25
For surveying a town lot, - - - -	2 00
For each adjoining lot, - - - -	1 00

SEC. 2. *And be it further enacted,* That the third section of the act to which this is an amendment be, and the same is hereby repealed.

CHAPTER VII.

An Act establishing the Fees of the Clerk of the Supreme Court of Errors and Appeals.—*Passed December* 12, 1816.

Fees of clerk of supreme court.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the clerk of the supreme court of errors and appeals shall be entitled to double the fees allowed by law to the clerks of the superior courts for like services.

CHAPTER VIII.

Extract from the Act to regulate the Proceedings in Suits at Common Law.—*Passed December* 20, 1820.

SEC. 12. *And be it further enacted,* That the clerk shall be allowed for issuing a summons, and copying the petition, fifty cents,* and for receiving and paying over money to the plaintiff, one half per centum thereon, to be taxed in the bill of costs.

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* The summons and petition here alluded to, are mentioned in the former part of the act. See title "Judicial Proceedings."

CHAPTER IX.

Extracts from an Act to repeal in part, and amend an Act, entitled An Act to regulate the Proceedings in the Courts of Law and Equity in this State.—*Passed June* 14, 1821.

SEC. 26. *And be it further enacted,* That the judges of the county courts shall take and receive the following fees, to be paid by the party applying for the business, viz.:

For granting letters testamentary, or letters of administration, - - - - - -	$1 75
For order of appraisement, - - -	1 00
For order of sale, - - - - - -	1 00
For order appointing a guardian, - - -	1 00
For order removing administrator or guardian, -	1 00
For all necessary orders on writs of *ad quod damnum,*	2 00
For all other necessary orders in the management and settlement of estates, each, - - -	50
For all other orders in county business, except when the county or state is directly interested, each,	50
And on all judgments in civil cases in term time, the tax fee now allowed by law for a jury, shall be paid to the said judges.	
In all litigated cases, respecting wills, mills, and ferries,	2 00

All of which fees shall be taxed in the bill of costs, and collected by the clerks, and paid over to the judges.

FENCES AND TIMBER.—1802.

CHAPTER I.

An Act to prevent Trespasses, in certain cases, and declaring what shall be deemed a Lawful Enclosure.—*Passed February* 10, 1802.

Cattle, &c. breaking into enclosures.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That if any horses, mares, mules, cattle, hogs, sheep, or goats, shall break into any grounds, enclosed with a strong and sound fence, five feet high, well staked and ridered, or sufficiently locked, and so close that the beasts breaking into the same, could not creep through; which shall be deemed a lawful fence; the owner of such horses, mares, mules, cattle, hogs, sheep, or goats, or any of them, shall for the first trespass so committed, make reparation to the party injured, for the true value of the damage he shall sustain; and for every trespass afterward double damages; to be recovered with costs, in any court of record.

Condition of the fence.

SEC. 2. *And be it further enacted,* That the condition of the fence, at the time the trespass was committed, may be proved to a jury upon trial; and that upon complaint made by the party injured, before any justice of the peace of that county wherein such trespass shall be, such justice is hereby empowered and required to issue his order, without delay, to three honest and respectable housekeepers of the neighbourhood; no ways related to the parties injured, nor interested concerning the trespass, reciting the complaint, and requiring them to view the fence, where the trespass is complained of, and to take memorandums of the same. And their testimony in such case, shall be good evidence to the jury, touching the lawfulness of the fence.

Hurting and wounding cattle, &c.

SEC. 3. *And be it further enacted*, That if any person, injured for want of such sufficient fence, shall hurt, wound, lame, kill, or destroy, or shall cause to be hurt, wounded, lamed, killed, or destroyed, by shooting, hunting with dogs, or otherwise, any of the kind or breed of horses, mules, cattle, sheep, hogs, &c.; he or she so offending, shall satisfy and pay the owner of the beasts so hurt, wounded, lamed, killed, or destroyed, double damages, with costs, recoverable as aforesaid. *Provided nevertheless*, That if the party liable to damages, as aforesaid, in either case, will abide by and pay what shall be deemed reasonable by three neighbours, indifferently chosen to assess the same, it shall be a bar against such suit.

Partition fences.

SEC. 4. *And be it further enacted*, That for the better ascertaining and regulating of partition fences, it is hereby directed, that where any neighbours shall improve lands, adjacent to each other; or where any person shall enclose any land, adjoining to another's land already fenced in, so that any part of the first person's fence becomes the partition fence between them; in both these cases, the charge of such division fence, so far as enclosed on both sides, shall be equally borne and maintained by both parties. To which, and other ends, in this law mentioned, each county court shall nominate, and is hereby required to nominate, and appoint so many honest and able men, as they shall think fit, for each county respectively, to view all such fences, about which any difference may happen or arise. And the aforesaid persons, in each county respectively, shall be the sole judges of the charge to be borne by the delinquent, or by both, or either party; and of the sufficiency of all fences, whether partition fences, or others. And where they judge any fence to be insufficient, they shall give notice thereof to the owners or possessors; and if any one of the said owners or possessors, upon the request of the other, and due notice given by the said reviewers, shall refuse to make or repair the said fence or fences, or to pay the moiety of the charge of any fence before made, being a division fence, within ten days after notice given; then, upon proof thereof before two justices of the peace of the respective counties, it shall be lawful for the said justices to order the person aggrieved, and suffering thereby, to repair the said fence or fences, who shall be reimbursed his costs and charges, from the person so refusing to make good the said partition fence or fences, and the said costs and charges shall be levied upon the offender's goods and chattels, under warrant from the said justice, by distress and sale thereof; the overplus, if any be, to be returned to the party offending.

Dikes, hedges, &c.

SEC. 5. *And be it further enacted*, That nothing herein contained shall be intended to prevent or debar any person or persons, from enclosing his or their grounds with sufficient walls or pallisadoes, or by dikes, hedges, and ditches. All such walls and pallisadoes to be in height at least five feet from the ground. And all such dikes to be at least three feet in height, from the bottom of the ditch, and planted or set with thorn or quickset; so that such enclosures shall fully answer and secure the several purposes meant to be answered and secured by this law.

Provided also, That such walls and pallisadoes, and dikes, hedges, and ditches, shall be subject to all provisions, inspection, and restrictions respectively, to which by this law any other enclosure or fence is made liable, according to the true intent and meaning thereof.

[SEC. 6. This section is inserted under title "Boats."]

SEC. 7. *And be it further enacted*, That if any person shall cut down, carry away, or destroy any cypress, white oak, black walnut, pacarn, or cherry tree, upon any lands not his own, without first having the consent of the owner, he shall forfeit and pay to the owner thereof ten dollars for every such tree, so cut, carried away, or destroyed; and for every other tree so cut, carried away, or destroyed, without leave, as aforesaid, the sum of three dollars, except such trees as may be cut, or taken out of, or for the use of public roads.

Opening gates, bars, &c.

SEC. 8. *And be it further enacted*, That if any person shall throw down or open any gates, bars, fence, or fences enclosing lands not his own; or shall in any manner injure any building not his own, he shall be liable to such damages as shall be assessed by a jury, with costs, to be recovered as aforesaid.

SEC. 9. *And be it further enacted*, That this act shall commence and be in force, from and after the passage thereof, any other law, regulation, or usage, to the contrary notwithstanding.

FINES AND FORFEITURES.—1807.

CHAPTER I.

Extracts from the Act of 1807, for the Punishment of Crimes and Misdemeanors.

Collection of fines.

SEC. 44. *And be it further enacted*, That all fines and forfeitures which shall be incurred under this act, shall be collected by the sheriff of the particular county, where such offender or offenders reside, and paid by him into the territorial treasury.

The jury to determine the fine.

SEC. 53. *And be it further enacted*, That in all prosecutions for offences of either a capital or inferior nature, no person shall on conviction be fined in a greater sum than shall be assessed by the verdict of a jury; and in all cases, where the defendant or defendants to any indictment whatsoever, shall plead guilty, the court before whom the prosecution is depending shall forthwith empannel a jury to assess the fine, which shall be inflicted on such defendant or defendants.

Of imprisonment for fines.

SEC. 56. *And be it further enacted*, That all fines and forfeitures which may be recovered by virtue of this act, shall be collected and paid by the sheriff of the county where the offender is tried, into the territorial treasury, and accounted for in the same manner that public taxes are or may be accounted for; and whenever the court, before whom any offender or offenders may be tried and fined by the verdict of a jury, shall be of opinion that such offender or offenders, is or are unable to pay the fine so inflicted, and that his or her, or their imprisonment will operate to increase the public expenditure, the said court are hereby authorized and required to discharge him, her, or them from custody.

CHAPTER II.

An Act prescribing the mode of Collecting and Accounting for Fines and Forfeitures, and for other purposes.—*Passed January* 26, 1808.

Clerks of courts to issue executions for fines, &c.

To transmit account of fines to auditor.

Penalty for neglect of duty.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the clerks of the several courts within this territory shall, immediately after the rising of the respective courts, issue execution in all cases in which executions are issued by law, for the fines, forfeitures, and amercements, that may have accrued to the territory, and unpaid previous to the rising of such court; and shall respectively, on or before the first days of May and November, in each and every year, transmit to the auditor of public accounts, a test of all such fines, forfeitures, and amercements, imposed by said courts respectively, in the six months next preceding, to the use of the territory, together with the name of the sheriff or other officers that shall have become liable to pay the same by law, to enable said auditor to call them to account. And every clerk failing to perform the aforesaid duty, shall forfeit and pay the sum of two hundred dollars, to be recovered by the auditor of public accounts, on motion to the supreme court, applied to the use of the territory: *Provided*, That ten days notice in writing be given of every such motion.

Sheriffs to account to auditor for all fines, &c. received by them, or judgment to be entered against them in superior court on motion.

SEC. 2. *And be it further enacted*, That if any sheriff or other officer shall make return upon any writ of *fieri facias*, or *venditioni exponas*, that he hath levied the fine, forfeiture, or amercement, as in such writ is required, or any part thereof, or shall return upon any writ of *capias ad satisfaciendum*, that he hath taken the body or bodies of the defendant or defendants, or hath the same ready to satisfy the fine, forfeiture, or amercement, in such writ mentioned, or have suffered him, her, or them to escape, or if any person shall be committed to the custody of such officer, by any of the courts of this territory, until the fine, forfeiture, or amercement, for which he, she, or they were committed, shall be paid, and shall suffer him, her, or them to escape, or shall actually have received the same, and shall not in every such case immediately, or as soon as may be, account to the auditor, and pay the same into the territorial treasury, then, and in each of said cases, it shall and may be lawful for the auditor of public accounts, upon motion in the supreme court, to demand judgment against such sheriff or other officer, or their securities, for the fine, forfeitures, or amercements, mentioned in such writ, or for so much as shall be returned levied, or for the amount for which the defendant or defendants shall have been committed, and such court is hereby authorized and required to give judgment accordingly, and award execution thereon: *Provided*, such sheriff or other officer have ten days previous notice of such motion.

Ten days notice to be given.

Fines, &c. to be paid in specie or territorial paper, and whichever received to be paid to the auditor on oath.

SEC. 3. *And be it further enacted*, That all fines, forfeitures, and amercements that may accrue to the territory in any of the courts thereof, and all taxes on law process, and suits thereof, shall be paid in lawful money of the United States, or in territorial warrants, and the clerks and sheriffs are hereby ordered to pay over the amount as received, either in gold, silver, or warrants, to the auditor on oath: *Provided*, that nothing in this section contained, shall be construed to extend to making territorial paper receivable in discharge of any judgment obtained against any sheriff, clerk, or other officer, or any of their securities in the said supreme court.

Clerks of courts to pay over all moneys received for law process and suits to the auditor semi-annually.

SEC. 4. *And be it further enacted*, That it shall be the duty of the clerks of the several courts within this territory, on or before the first day of May and November in each and every year respectively, to account on oath to the auditor of public accounts, and pay into the territorial treasury the amount of all taxes that shall become due from them by law, on law process and suits; and if any clerk shall neglect or refuse so to account, and pay as aforesaid; then, and in such case, it shall and may be lawful for the auditor of public accounts on motion made in the supreme court, to demand judgment against such clerks or their security, for double the amount of taxes, that may be due, and owing from said clerk by law, which he shall ascertain from the truest information, he can get of the same, and such court is hereby authorized and required to give judgment accordingly, and award execution thereon: *Provided*, such clerk have ten days previous notice of such motion.

Penalty for neglect.

Fines, &c. to be paid over in same manner.

SEC. 5. *And be it further enacted*, That if any clerk of any of the courts of this territory, shall receive any fine, forfeiture, or amercement which shall come into his hands by law, he shall account for and pay the same in like manner, and be subject to the same remedy and proceedings against him for default, as is directed by this act in case of taxes on law process.

Fines collected by justices, how accounted for.

SEC. 6. *And be it further enacted*, That all fines imposed by law, and collected by any justice of the peace, in behalf of this territory, shall be accounted for by such justice, and paid in like manner, and subject to the same remedy and proceedings against him for default as is directed by this act, in case of fines received by clerks.

CHAPTER III.

An Act amendatory to an Act, entitled "An Act prescribing the Mode of Collecting and Accounting for Fines and Forfeitures."—*Passed December 24, 1812.*

Superior court to give judgment.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the superior court of law and equity, in each and every county within this territory, shall have power to give judgment and award execution against any clerk of a court for a failure to comply with the requisitions of the first section of the act to which this is an amendment, in the same manner that the supreme court formerly could have done.

Sheriff not liable for the casual escape of a prisoner.

Sec. 2. *And be it further enacted,* That no sheriff or coroner, as the case may be, shall be liable to pay the fine, forfeiture, or amercement, which may have been imposed by any court of this territory, against any person who shall have been committed to his custody, by the court imposing the same, or where any person shall be taken in execution to satisfy any fine, forfeiture, or amercement, unless such sheriff or coroner shall have received the money, or suffered a wilful or negligent escape; but whenever the proper tribunal shall have discharged any person who was committed or taken in execution as aforesaid, or such person shall have escaped without any connivance or neglect of the sheriff or coroner (as the case may be) upon proof thereof made to the superior court of law and equity, of the county where such person has been in custody, such court shall certify the same to the auditor of public accounts, who shall release such office from the fine, and forfeiture, or amercement with which he may have been charged, on account of such person committed by the court, or taken in execution as aforesaid.

Acts repealed.

Sec. 3. *And be it further enacted,* That all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.*

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* An Act concerning Jurors, &c. passed 20th December, 1815, provides that the clerks shall return to the county treasurer an account of fines and forfeitures, and pay the same when collected into the county treasury. See Title 50, "Public Officers," Chapter 8.

See also to the same effect, the act of 1819, under title 15, "Courts Superior," Chapter 7, Section 13.

CHAPTER IV.

An Act to authorize the Governor of this State to remit all or part of any Forfeiture, which has or may accrue to this State.—*Passed December* 12, 1822.

Governor may grant pardons, &c.

Remit fines and forfeitures.

Proviso.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the governor of this state, or person exercising that office, be, and he is hereby authorized and empowered in all criminal and penal cases, except those of treason and impeachment, to grant pardons, reprieves, and to remit all fines and forfeitures which have accrued, or may hereafter accrue to this state: *Provided,* That the powers hereby granted shall not extend to fines and forfeitures which have already been paid into the treasury.

Commencement.

SEC. 2. *And be it further enacted,* That this act shall take effect from and after the passage thereof.

Governor may remit fines accruing to county.

Proviso.

SEC. 3. *And be it further enacted,* That the Governor, or person exercising the duties of that office, shall have full power to remit all fines and forfeitures, or so much thereof as he may deem expedient, which have accrued, or may hereafter accrue to any county in this state: *Provided,* said fine or forfeiture be not collected and paid into the treasury of any such county.

Act of 1820 repealed.

SEC. 4. *And be it further enacted,* That the act passed on the twenty-first of December, eighteen hundred and twenty, authorizing the governor, or person exercising that office, to remit any part of any fine, forfeiture, or sentence of imprisonment, be, and the same is hereby repealed.

FIRE HUNTING.—1803.

CHAPTER I.

* An Act to prevent unlawful Hunting, and for other purposes.—*Passed February* 10, 1803.

Persons hunting with fire by night, how punished.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, and it is hereby enacted by the authority of the same,* That it shall not be lawful for any person or persons to hunt with fire in the night time, within four miles of any settlement in this territory; and any person convicted thereof before any two justices of the peace, of the county wherein the offence was committed, by oath of one or more credible witnesses, shall forfeit and pay for every such offence, twenty dollars; to be recovered with costs, by warrant of the justices before whom the conviction shall be had, for the use of the person who shall sue for the same: and in case any person or persons so convicted, shall refuse or neglect to pay such fine, then it shall be the duty of the justices before whom he or they shall have been convicted, to commit such person or persons to the jail of the county where the crime shall have been committed, there to remain, without bail or mainprize, any term, not less than one, nor more than three months.

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* See chapter 2 of this title, for an amendment of this act.

Double damages for cattle killed.

SEC. 2. *And be it further enacted*, That if any person hunting with fire in the night-time shall kill any horse, mare, colt, neat-cattle, hog, sheep, or other domestic animal, not being his own, the person or persons so offending, shall be liable to an action at law, for double damages to the person aggrieved, in addition to the above penalties.

Slaves hunting to be whipped.

SEC. 3. *And be it further enacted*, That if any slave or slaves shall be discovered fire-hunting in the manner aforesaid, such slave or slaves, on conviction thereof, in manner aforesaid, before any one justice of the peace, for the county wherein the offence may be committed, shall, by order of said justice, receive thirty-nine lashes, well laid on his bare back, and the master or owner of said slave, or person in whose care he shall be, shall forfeit and pay the sum of ten dollars for each slave so convicted, to be levied by a warrant, immediately to be issued by such justice for the purpose.

SEC. 4. *And be it further enacted*, That if any person shall be convicted, before two justices of the peace, in manner aforesaid, of sending or having sent his or her slave, or any slave in their charge or care, to fire-hunt in manner before mentioned, the person or persons so offending, shall be subject to the same pains as are provided by this act to be inflicted on fire-hunters, but the slave so sent shall receive no punishment.

How to compel witnesses.

SEC. 5. *And be it further enacted*, That if any person summoned to give evidence against any person accused under this act, shall refuse or neglect to give such evidence, the person so refusing or neglecting, shall be committed to the jail of the county where the offence shall be committed, until he or they shall give testimony against the said offender.

Not to repeal former act.

SEC. 6. *And be it further enacted*, That nothing contained in this act shall be construed to affect any provisions contained in the act, entitled "An Act for the Punishment of Crimes therein mentioned," passed the thirtieth of January, 1802.

To be read to the militia.

SEC. 7. *And be it further enacted*, That the captains of the several companies of militia in this territory, shall cause this act to be read at the head of their respective companies twice in every year, after the publication thereof, under the penalty of forfeiting to the use of the county for every such neglect, five dollars, recoverable by warrant of any justice of the peace, on the oath of two reputable witnesses.

SEC. 10. *And be it further enacted*, That this act shall commence and be in force from and after the first day of March next ensuing.

CHAPTER II.

An Act to suppress the evil and pernicious Practice of Fire-Hunting.—*Passed December* 12, 1822.

Penalty for fire-hunting.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the first day of January next, it shall not be lawful for any person or persons to hunt with fire in the night-time; and every person convicted thereof, shall forfeit and pay for every such offence, the sum of fifty dollars; one half to go to the use of the informer, and the other half to go to the use of the county: *Provided,* that this act shall be construed only to embrace persons hunting deer with a gun and fire at night.

Proviso.

Repeal.

SEC. 2. *And be it further enacted,* That any law heretofore authorizing and permitting fire-hunting within four miles of any settlement, be, and the same is hereby repealed.

FORCIBLE ENTRIES AND DETAINER.—1805.

CHAPTER I.

An Act concerning Forcible Entries and Detainers.—*Passed February* 10, 1805.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That no person shall enter upon any lands, tenements, or other possessions, and detain or hold the same, but where entry is given by law; and then only in a peaceable manner.

Entries maintained by force, &c. within the meaning of this act.

SEC. 2. *And be it further enacted,* That if any person shall enter upon, or into any lands, tenements, or other possessions, and detain and hold the same, with force or strong hand; or with weapons; or by breaking open the doors, windows, or other part of a house, whether any person be in it or not; or by any kind of violence whatsoever; or by threatening to maim, kill, or beat the party in possession; or by such words, circumstances, or actions, as have a natural tendency to excite fear or apprehension of danger; or by putting out of doors, or carrying away the goods of the party in possession; or by entering peaceably, and then turning by force the party out of possession; or by frightening by threats, or other circumstances of terror: in such case, every person so offending shall be guilty of a forcible entry and detainer, within the meaning of this act.

Peaceable entries.

SEC. 3. *And be it further enacted,* That no person who shall lawfully or peaceably enter upon or into any lands, tenements, or other possessions, shall hold or keep the same unlawfully, and with force, or strong hand, or weapons, or violence, or menaces, or terifying words, circumstances, or actions aforesaid.

And it is hereby declared, That whatever words or circumstances, conduct or actions, will make an entry forcible under this act, shall also make a detainer forcible.

SEC. 4. *And be it further enacted,* That the three preceding sections of this act shall extend to and comprehend terms for years; and all estates, whether freehold or less than freehold.

Tenants holding over, &c.

SEC. 5. *And be it further enacted,* That if any tenant or tenants, for term of life or lives, year or years, or other person or persons who are or shall be in possession of any lands, tenements, or hereditaments, by, from, or under, or by collusion with such tenant or tenants, shall wilfully and without force, hold over any lands, tenements, or hereditaments, after demand and notice in writing given for the delivery of the possession thereof, by his, her, or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements, or hereditaments shall belong, his, her, or their agent or attorney thereunto lawfully authorized, then such person or persons so holding over, shall be guilty of an unlawful detainer.

Before whom cognizable.

SEC. 6. *And be it further enacted,* That the aforesaid forcible entries and detainers, and unlawful detainers, are hereby made cognizable before any justice of the peace of the county in which they are committed.

On complaint, justice may issue a venire, &c.

SEC. 7. *And be it further enacted,* That when complaint to any justice of the peace of the proper county shall be made in writing, and signed by the party aggrieved, his agent or attorney, specifying the lands, tenements, or other possessions, so forcibly entered upon and detained, or forcibly or unlawfully detained, by whom and when done, and the estate therein, it shall be the duty of the said justice to issue a precept under his hand and seal, directed to the sheriff of the said county, commanding him to cause to come before the said justice, twelve good and lawful men of the said county, qualified to serve as petit jurors, to inquire into and try such forcible entry and detainer, or forcible or unlawful detainer; which precept shall be in the form, or to the effect following, that is to say:

County of ——————, *ss.*

Form.

The Mississippi Territory, to the sheriff of the said county, greeting. *Whereas* complaint is made to the undersigned, justice of the peace for the said county, of a certain forcible entry or detainer, or of a certain unlawful detainer, (as the case may be) made by E. F. into the messuage, or upon the lands of C. D. in the county aforesaid. You are therefore hereby commanded to cause to come before the undersigned justice aforesaid, at the hour of ————, in the ——noon of the ——— day of —————, twelve good and lawful men, of your county, to inquire of and try the said forcible entry and detainer, or forcible or unlawful detainer. Given under the hand and seal of the said justice, this ——— day of , in the year of our Lord one thousand, &c.

Justice to issue summons for defendant.

SEC. 8. *And be it further enacted,* That the said justice shall issue a summons to the party complained against, in the words, or to the following effect:

Form.

County of ——————— *ss.*

Mississippi Territory, to the sheriff of the said county, greeting. You are hereby commanded to summon E. F. of the said county, to appear before the undersigned, justice of the peace in and for the county aforesaid, at the hour of ——— in the ——noon of the ——— day of —————, to answer to, and make defence against the complaint of C. D. of a forcible entry and detainer,* made by the said E. F. into the messuage, or upon the lands of the said C. D. in the county aforesaid; and have you then and there this precept, with a return of your proceedings therein. Given under the hand and seal of the said A. B. the ——— day of —————, in the year of our Lord, one thousand, &c. A. B. (L. S.)

Summons how served.

Sec. 9. *And be it further enacted,* That the said summons shall be served upon the party against whom the said complaint is made, or a copy thereof left at his usual place of abode six entire days before the day of appearance therein mentioned; and that such service of the said summons, in any part of this territory, as well out of the said county as in it, shall be good and effectual in law. And further, that no jury shall, by virtue of this act, be sworn to inquire of and try any forcible entry and detainer, or forcible or unlawful detainer, where such previous notice shall not have been given as aforesaid.

Defendant may plead not guilty.

Sec. 10. *And be it further enacted,* That the party against whom such complaint is made, may at the time of appearance, mentioned in the said summons, and before the said jury is sworn, plead not guilty to the charge or complaint, or that he hath been three years in quiet possession, and his estate therein not ended or determined, agreeably to a subsequent clause in this act; and thereupon the parties shall be at issue; and the said justice shall proceed to swear the jury, so returned, to inquire of, and try the same. And if the said party, against whom the complaint is made, as aforesaid, does not appear at the time specified in the said summons, or appearing, does not plead to the said complaint; then it shall be lawful for the said justice to proceed in the same manner, as if he had pleaded not guilty.

Issue.

Juror's oath.

Sec. 11. *And be it further enacted,* That to the said jurors, and each of them, who shall be returned to inquire of, and try the said complaint, the justice shall administer the following oath or affirmation. "You do swear, or affirm, that you will well and truly try this issue, joined between C. D. and E. F. and a true verdict give according to the evidence."

Complaint to be read to the jury.

Sec. 12. *And be it further enacted,* That when the jury shall be sworn, as aforesaid, the justice shall cause the said complaint to be read to them, and then call upon the complainant to support the same.

When jury find for plaintiff. Justice to award treble costs, &c.

Sec. 12. *And be it further enacted,* That if the jury find the party against whom such complaint is exhibited, guilty, or fined against his plea of possession, it shall be the duty of the said justice to record the said verdict, and to give judgment thereon, with treble cost: and also to issue a writ of restitution, directed to the sheriff, to cause the complainant to be re-seized, or re-possessed; to which shall be added a clause, commanding the sheriff to levy the said costs, of the goods and chattels of the offender: and for want thereof, to take the body of such offender, and safely keep him in close custody, in the common jail of the county, until he shall pay the same, or be thence delivered by due course of law.

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* If detainer only, then say, of a forcible detainer.

Costs how levied.

SEC. 14. *And be it further enacted,* That if the jury find against the complainant, the said justice shall record the verdict, and give judgment accordingly, with costs; and shall issue execution, directed as aforesaid, for the said costs, against the goods and chattels; and in want thereof, against the body of the complainant.

Verdict for defendant.

SEC. 15. *And be it further enacted,* That the said justice may, at the request of either party, and on good reasons being assigned, postpone the said trial to any time, not exceeding fifteen days; but such postponement shall be on the payment of costs.

Justice may postpone.

SEC. 16. *And be it further enacted,* That it shall be the duty of the said justice to enter on his minutes or docket, true copies of the complaint, exhibited by virtue of this act, of the summons and *venire;* and their respective returns, and the names of the jurors, their verdict and his judgment thereon: and also the names of the witnesses, and the admission of evidence objected to; and the rejection of evidence offered, the reason of such admission or rejection, and all the proceedings had before him, touching the said complaint.

Justice to make record.

SEC. 17. *And be it further enacted,* That if the sheriff of any county shall neglect or refuse to execute, or return, any precept, writ, or other process, directed and delivered to him, by virtue of this act, he shall for every such offence forfeit and pay two hundred dollars to the party aggrieved; to be recovered with costs, by action of debt, in any court of this territory having cognizance thereof.

Sheriff's refusal.

SEC. 18. *And be it further enacted,* That the proceedings had by virtue of this act, on such forcible entry and detainer, or forcible or unlawful detainer, may be removed before the circuit court of the county in which the same may have taken place, and in the district of Washington, before the superior court of said district; and such removal shall be by writ of *certiorari,* and in no other way, and then only after judgment.

Proceedings may be removed.

SEC. 19. *And be it further enacted,* That neither the said judgment, or any thing in this act, shall bar or prevent the party injured, from bringing an action of trespass, or other actions, against the aggressor, or party offending.

Judgments no bar to civil actions.

SEC. 20. *And be it further enacted,* That the estate or merits of the title, shall in no wise be inquired into; on any complaint, which shall be exhibited by virtue of this act: *Provided always,* that this act shall not extend to any person who hath had the uninterrupted occupation, or been in quiet possession of any

Exceptions.

lands or tenements, for the space of three whole years together, immediately preceding such complaint, so exhibited to the said justice, and whose estate therein is not ended or determined; but every such person may plead the same to the said complaint, which shall be tried in the manner herein before prescribed.

SEC. 21. *And be it further enacted*, That every justice of the peace, before whom any prosecution shall be instituted, by virtue of this act, shall be, and he is hereby authorized to issue a writ of *subpœna ad testificandum*, into any county of this territory.

Officers' fees. SEC. 22. *And be it further enacted*, That in prosecutions under this act, the following fees shall be allowed:

To the justice.

For every summons, - - - - - -	$ 30
For every *venire facias*, - - -	40
For entering copies on all proceedings thereon, -	2 00
For subpœna for every witness, - - -	12
For swearing the jury, - - - - -	20
For administering every oath, or affirmation, -	6
For entering every verdict, - - -	12
For entering every judgment, . - -	12
For every trial - - - - - -	2 00
For return to every certiorari, - - -	1 00

TO THE SHERIFF.

To the Sheriff.

For serving every summons, and return, - - -	1 00
For summoning every jury, returning precepts, and attending the trial, - - - - -	4 00
For executing every writ of restitution, - -	2 00
For serving every execution for costs, advertising property for sale, &c. the same fees as are, or shall be allowed, for like services, in the county courts.	

TO THE JURORS AND WITNESSES.

To the jurors and witnesses. The same fees as are, or shall be allowed to them respectively, in civil cases, in the county courts.

TO THE ATTORNEY.

To the attorney.

For the trial of every cause, - - -	3 00

Penalty on jurors and witnesses failing to appear. SEC. 23. *And be it further enacted*, That every person summoned as a juror, or subpœnaed as a witness, who shall not appear, or appearing shall refuse to serve, or give evidence, in any prosecution instituted by virtue of this act, shall forfeit and pay, for every such default or refusal, unless some reasonable cause be assigned, such fine, not exceeding eight dollars, in the case of a juror, and not exceeding one hundred dollars, in the case of a witness, as the said justice shall think proper to impose: and such justice is hereby authorized and required, to issue an execution, directed to any constable of the said county, to levy the same of the goods and chattels of the said offender; which fine, when recovered, shall be applied by the said justice to the use of the said county.

SEC. 24. *And be it further enacted,* That this act shall commence and be in force from and after the passing thereof.

CHAPTER II.

An Act to amend "An Act concerning Forcible Entries and Detainers."—*Passed December* 3, 1810.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That so much of the thirteenth section of the act, to which this is an amendment, as authorizes the taxing of treble costs, against the person complained against, in case he be cast, be, and the same is hereby repealed.

CHAPTER III.

Extract from An Act to Regulate the Proceedings in the Courts of Law, &c.—*Passed December* 14, 1819.

Forcible entry and detainer.

SEC. 39. *And be it further enacted,* That when any judgment shall be entered up for the plaintiff by any justice, on the trial of any cause for a forcible entry and detainer, or forcible or unlawful detainer, no writ of restitution shall be issued by said justice within twenty days from the day of entering said judgment.

GAMING.—1807.

CHAPTER I.

An Act to prevent the evil Practice of Gaming.—*Passed February* 4, 1807.

Gaming contracts void.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That all promises, agreements, notes, bills, bonds, or other contracts, judgments, mortgages, or other securities, or other conveyances whatsoever, made, signed, given, granted, drawn, or entered, or executed by any person or persons whatever, after the passing of this act, where the whole or any part of the consideration of such promise, agreement, conveyance, or security, shall be for money, or other valuable thing whatsoever, laid or betted at cards, dice, or at any gaming table, commonly called A B C, or E O, or billiards, or any other table, known or distinguished by any other letters, or by any figures, or rowley powley table, or any rouge and noir, or at any faro bank, or at any other gaming table or bank of the same or the like kind, under any other denomination whatsoever, or at any horse race, cock fighting, or at any other sport or pastime, or on any wager whatsoever, or for reimbursing or repaying any money knowingly lent or advanced at the time or place of such play, horse racing, or cock fighting, or other sport or pastime, to any person or persons so gaming, betting, or wagering, or shall at such time and place so play, bet, or wager, shall be utterly void and of none effect, to all intents and purposes whatsoever, any law, custom, or usage to the contrary thereof, in any wise notwithstanding.

Gaming, &c. how punishable.

SEC. 2. *And be it further enacted*, That if any person or persons shall at any time after the passing of this act, play at any tavern, inn, store for the retailing spirituous liquors, or in any other public house, or in any street, highway, or in any other open place, at any game or games, with cards or dice, or at any gaming table commonly called A B C, or E O, or any gaming table known or distinguished by any other letter or by any figures, or rowley powley table, or at any rouge and noir, or at any faro bank, or at any other gaming table or bank of the same, or like kind, under any other denomination whatever, or shall bet on the sides or hand of such as do game; any justice of the peace or of the quorum, shall, upon information, upon oath made before him, fine all and every such person so playing, betting, or wagering, in the sum of ten dollars, to be recovered before any such justice with costs, and be applied to the use of the person giving information of the same; and the said justice shall also, on the like information made against any keeper or keepers of such taverns, inns, retail houses, or public places, fine each and every of them, in the sum of twenty dollars for every such offence, one half to the informer and the other half to the use of the territory: and when any person shall be fined as aforesaid, and be unable or refuse to pay the same, agreeably to the requisitions of this act, he or they so failing or refusing, shall be by said justice, committed to the common jail of said county, there to remain without bail or mainprize for the space of ten days, and the territory shall stand charged with the costs, if the person or persons so convicted is not in possession of so much property as will be sufficient to satisfy the same: or the said justice may on the same information made as aforesaid before him, bind over to appear at the next circuit court in the county in which such play shall be carried on, all and singular the said persons who shall so play or bet, and shall require him or them to give security for his or their appearance thereat, and at his or their failing to give security, shall commit him or them to the common jail of the said county, and shall also bind over the keeper or keepers of such taverns, inns, stores, or public places, to appear at the ensuing circuit court; and every person so playing, upon being convicted thereof upon indictment, shall forfeit a sum not exceeding fifty dollars; and every person keeping such tavern, inn, retail store, or public place, shall, upon being convicted thereof upon indictment, forfeit a sum not exceeding one hundred dollars, for each and every such offence.

SEC. 3. *And be it further enacted*, That all and every keeper or keepers, or exhibiter or exhibiters of either of the gaming tables commonly called A B C, or E O, or any other table distinguished and known by any other letter or by figure, or billiard table, or rowley powley table, or rouge and noir, or of a faro bank, or of any other gaming table or bank of the same or like kind, under any other denomination whatever, shall be deemed and rated as vagrants; and moreover it shall and may be lawful for any justice of the peace, or of the quorum, and they are hereby required by warrant under his or their hands, to order any such gaming table to be seized and publicly burnt or destroyed. Vagrants under this act.

SEC. 4. *And be it further enacted*, That the judge or judges of the respective circuit courts of this territory, shall constantly give this act in charge to the grand juries of their courts, at the term such grand juries shall be sworn. Judges to give this act in charge.

SEC. 5. *And be it further enacted*, That all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER II.

An Act to amend an Act, entitled "An Act to prevent the evil Practice of Gaming."—*Passed December* 3, 1810.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That no person or persons shall hereafter undertake to raise by lottery, any sum of money or to dispose of by lottery any property, either of his, her, or their own, or for any other person or persons whatever, unless he she or they be authorized by law; and if any person or persons shall attempt to raise any sum of money, or to dispose of any property by a lottery, except as herein authorized, each person concerned therein shall forfeit the sum of one thousand dollars, to be recovered by information or indictment, in any court, having competent jurisdiction, for the use of the territory: and when any of the judges of the superior courts of law and equity, or any justice of the peace, on his own view of the offence, or by information on the oath of one or more creditable witness or witnesses, shall be satisfied that any person is concerned in any scheme of a lottery contrary to the provisions of this act, he is authorized and required to issue his warrant against any such person or persons, and have him, her, or them brought before him, and shall compel any and every person concerned in any lottery contravening this act as aforesaid, to enter into a recognizance, himself in the sum of one thousand dollars, two good and sufficient securities in the sum of five hundred dollars each, to appear at the next superior court of the proper county, to answer to such charges as may be exhibited against him, and to be of good behaviour in the meantime; and in case any person taken up as aforesaid, shall fail to give the security required by this act, he shall be committed to jail.

CHAPTER III.

An Act to amend an Act, entitled "An Act to prevent the evil Practice of Gaming."—*Passed December* 17, 1811.

Licensed billiard tables.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That hereafter, any person or persons wishing to set up and use a billiard table, within this territory, may do the same upon paying to the county treasurer of the proper county the sum of one hundred dollars, whereupon said treasurer shall grant to such applicant a license to set up a billiard table in any named house; and every billiard table set up and licensed as aforesaid, shall be exempted from all the penalties imposed by law, for one year from the date of such license, and every treasurer receiving any money for licensing any billiard table or tables as aforesaid, shall pay the same into the territorial treasury, within six months after receiving the same, under the penalty of twenty-five dollars for every such offence, recoverable in any court of competent jurisdiction in this territory: *Provided,* That every such treasurer and his securities, shall be subject to a recovery for any, and all moneys that he may have received as aforesaid, upon motion by the auditor of public accounts, in the same manner as is provided for the recovery of other territorial taxes.*

Persons may be apprehended, detected in unlawful gaming, and brought before officers of the peace to answer, &c.

SEC. 2. *And be it further enacted,* That when any judge or justice of the quorum, or justice of the peace, shall receive information, or have reason to believe, that any gaming is carried on, contrary to the provisions of the act, entitled "An Act to prevent the evil Practice of Gaming," or to any act amendatory thereto, such judge, justice of the quorum, or justice of the peace, is authorized and required to issue his warrant, directed to the sheriff, or any constable of the proper county, commanding him to apprehend such person or persons, and bring him or them before such judge, justice of the quorum, or justice of the peace, to answer to such charge or charges; and if, upon examination, such judge, justice of the quorum, or justice of the peace, shall be of opinion that such person or persons is or are guilty of the charge or charges made against him or them, he or they shall be bound in a recognizance, with two good and sufficient securities, in such penalty as such judge, justice of the quorum, or justice of the peace, shall think reasonable, to appear at the next court of such county, having cognizance of the offence: *Provided,* That it shall be the duty of every judge, justice of the quorum, and justice of the peace, to cause to be burnt or otherwise destroyed, all tables of every denomination or description, set up or opened for the purpose of gaming contrary to law.

If found guilty, shall be bound in recognizance to appear, &c.

Officers of the peace to cause to be burnt all unlawful instruments of gaming.

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* The first and third sections of this Act are omitted in Turner's Digest, under this idea, that they are repealed in the next succeeding Act, passed in 1812.

SEC. 3. *And be it further enacted*, That whenever any judge, justice of the quorum, or justice of the peace, may deem it necessary, they are hereby authorized to summon as many militia men as they may deem necessary in enforcing the provisions of this act; and every person refusing or failing to aid and assist herein, shall forfeit and pay twenty dollars, to be recovered before any justice of the peace, for the use of the proper county.

The aid of militia may be called in.

SEC. 4. *And be it further enacted*, That if any person should be sued for any part that he may have acted in aiding the due execution of this act, or any part thereof, he may plead the general issue, and give this act in evidence, any law to the contrary notwithstanding.

Any person sued, may give this act in evidence.

SEC. 7. *And be it further enacted*, That nothing in this act, nor in the act to prevent the evil practice of gaming, to which this is an amendment, shall be construed to extend to persons casually attending or adventuring at any gaming table, but to those only who shall be the real or apparent owners or holders of such gaming table, or other machine or means used in gambling.

Not to extend to persons casually attending or adventuring.

CHAPTER IV.

An Act to amend and reduce into one, the several Acts to prevent the evil Practice of Gaming.—*Passed December* 21, 1812.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That from and after the passing of this act, if any person or persons shall be guilty of keeping or exhibiting any gaming table, commonly called A B C, or E O, or roulette, or rowley powley, or rouge and noir, or any faro bank, or any other gaming table or bank of the same or like kind, or of any other description under any other denomination whatever, or shall be in any manner, either directly or indirectly, interested or concerned in any of the aforesaid gambling tables, bank, or games, either by furnishing money, or other articles for the purpose of carrying on the same; being interested in the loss or gain of the said table or bank, or employed in any manner in conducting, carrying on, or exhibiting said table or bank; every person so offending, and being convicted thereof in the superior court of law and equity of the proper county, shall pay a fine of not less than five hundred dollars, and not more than two thousand dollars, and shall stand in the pillory three days in succession, one hour each day.

Gaming prohibited.

SEC. 2. *And be it further enacted*, That if any owner or occupant of any house, out-house, or other building, shall knowingly permit or suffer any of the before mentioned tables, banks, or games to be carried on or exhibited in their said house, out-house, or other building, and being convicted thereof, shall pay a fine of not less than one hundred dollars, nor more than two thousand dollars: *Provided always*, That if the owner or occupant of said house, out-house, or other building, shall give

Owners or occupants of houses to prohibit gambling.

information to any judge or justice of the peace, of the proper county, against any person keeping, exhibiting, concerned or interested in said table, bank, or game, within six days after the same comes to his knowledge, he or they so informing shall not be liable to the penalty of this section.

Penalty for keeping a billiard table not licensed.

SEC. 3. *And be it further enacted*, That if any person shall be guilty of keeping or exhibiting any billiard table for play, not being licensed agreeably to law, or shall be in any way interested or concerned in said table, and being convicted thereof, shall suffer the same punishment as persons convicted of the offences specified in the first section of this act; and all and every owner or occupant of any house, out-house, or other building, who shall suffer or permit any such billiard table not licensed agreeably to law, to be carried on or exhibited in their said house, out-house, or other building, and being convicted thereof, shall suffer the same penalty as persons convicted under the second section of this act: *Provided* the said owner or occupant of the said house, out-house, or other building, does not give information to a judge or justice of the peace, against the persons keeping, exhibiting, concerned, or interested in such table, within six days after it comes to his knowledge, agreeably to the proviso in the said second section contained.

Civil officers to arrest persons suspected of gambling.

SEC. 4. *And be it further enacted*, That it shall be the duty of all judges, justices of the peace, justices of the quorum, and city magistrates, who shall receive information, or shall have good cause to believe that any person is guilty of any of the offences created by this act, it shall be the duty of said judge, justice of the quorum, justice of the peace, or city magistrates to cause the said person or persons so suspected to be arrested, and brought before them, and if on examination the said judge, or justice, or magistrate, shall be of opinion that such person is guilty of the charge laid against him, the said judge shall bind him in recognizance, with good and sufficient security, to appear at the next superior court of law and equity, to answer said charge, and also that he in the mean time will not be guilty of the like offence, with which he stands charged, and in default of his finding such security, to commit the offender to the jail of the proper county.

SEC. 5. *And be it further enacted*, That whenever any judge or justice may deem it necessary, they are hereby authorized to summon a militia officer, with as many militia men as they may think competent to assist the officer in enforcing the provisions of this act, and every person refusing or failing to aid and assist therein, shall forfeit and pay the sum of twenty dollars, to be recovered before any justice of the peace, for the uses hereafter mentioned.

Billiard tables to be licensed.

SEC. 6. *And be it further enacted*, That hereafter, any person wishing to set up and use a billiard table, for play, within this territory, may do the same by obtaining a license from the clerk of the county court, of the proper county, which license the clerk is hereby authorized and directed to grant, on the applicant's paying into his hands the sum of one hundred dollars, and one dollar, the clerk's fee, for granting such license: and every billiard table, the owners and keepers thereof, so set up and licensed as aforesaid, shall be exempted from all the pains and penalties imposed by any preceding section of this act, for the space of one year from the date of such license: and every clerk receiving any money for licensing any billiard table as aforesaid, shall pay the same into their respective county treasury, within one month thereafter, under the penalty of two hundred dollars, to be recovered before any court having jurisdiction thereof, upon motion made by the county treasurer, in the same manner as is provided for the recovery of territorial taxes by the auditor of public accounts.

Moneys for the licensing of billiard tables, how appropriated.

* SEC. 7. *And be it further enacted*, That all fines and forfeitures under this act, in all the counties of this territory (except the county of Adams,) shall be for the use of the county where the same was paid, or where the fine was imposed.

Duty of the clerks of the county courts.

SEC. 8. *And be it further enacted*, That it shall be the duty of the clerk of the county courts respectively to furnish the judge of the superior court, on the first day of each term, a list of the persons having obtained license as aforesaid, within one year preceding said court, and the date of such license, which list, together with this act, shall by the judge be given to the grand jury, in charge, and the grand jury shall present every person who shall have used or set up a billiard table, without having taken out a license as aforesaid, which person or persons so presented, shall be tried on said presentment by a petit jury, and fined in such sum as the jury may assess: *Provided*, The same does not exceed the fines imposed in the first section of this act.

Licenses heretofore granted, not to be vacated.

SEC. 9. *And be it further enacted*, That all acts and parts of acts, coming within the purview and meaning of this act, be, and the same are hereby repealed: *Provided*, That nothing in this act contained shall be construed so as to vacate any license heretofore legally granted for keeping a billiard table, but the same shall be as valid as if this act had not passed.

CHAPTER V.

Extract from an Act to prevent Frauds in certain Cases, and for other Purposes. —*Passed December 24*, 1812.

NOTE.—The 1st and 2d sections will be found under title "Executions."

Act of Feb. not repealed.

SEC. 3. *And be it further enacted*, That the act to amend and reduce into one the several acts to prevent the evil practice of gaming, is not to be understood and construed as repealing the first section of an act to prevent the evil practice of gaming, passed the fourth day of February, in the year eighteen hundred and seven, but that the same shall be in full force and effect.

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* A part of this section relating to the Natches Hospital is left out as obsolete.

CHAPTER VI.

Extract from an Act making further Regulations in Judicial Proceedings.— ***Passed December 24, 1812.***

Gambling.

SEC. 10. *And be it further enacted*, That the courts of equity shall hereafter have jurisdiction in all cases of gambling consideration, so far as to sustain a bill for discovery, or to enjoin judgments at law.

CHAPTER VII.

Extract from an Act prescribing the manner of Changing the Venue in Criminal cases, and for other purposes.—*Passed December 18, 1821.*

Persons exhibiting three-ticket lottery, how punished. Fined. Proviso.

SEC. 3. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, if any person shall be guilty of exhibiting the three ticket lottery, or shall be guilty of playing at the game called the three ticket lottery, or the game called three thimbles, every such person shall, on conviction of such offence, be sentenced to stand in the pillory on three several days, for the space of one hour each day, and shall forfeit and pay to the state a sum not less than five hundred nor more than two thousand dollars, to be assessed by the jury who tries the cause: *Provided*, That the provisions of this act shall only embrace the holder or exhibiter of such game or lottery, and shall not extend to persons who may casually bet at such game or lottery.

Penalties for similar offences.

SEC. 4. *And be it further enacted*, That if any person should exhibit any lottery or game similar to those specified in the third section of this act, wherein a greater or less number of thimbles or cups than three are used, such person shall be liable to the same penalties and forfeitures, to be ascertained in the same way as is prescribed in the said third section.

SEC. 5. *And be it further enacted*, That this act shall commence and take effect from and after the first day of January, one thousand eight hundred and twenty-two.

GUARDIANS.—1803.

CHAPTER I.

An Act concerning Wills, and the duty of Executors, Administrators, and Guardians.—*First passed March* 12, 1803: and re-enacted with amendments in 1807.

Note.—The first nineteen Sections are introduced under Title "Wills." The following Sections, to the 44th, are under Title "Executors and Administrators."

Some provisions in regard to Orphans, will be found under Title "Inferior Courts," Chapter the first, and Section 15th.

Sec. 44. *And be it further enacted,* That the chief justice of the orphans' court, in each county respectively, when, and so often as there shall be occasion, shall be, and hereby is empowered, to allow of guardians that shall be chosen by minors of fourteen years of age, and it shall be lawful for the said court to appoint guardians for such as shall be within, or under that age. Of the appointment of guardians.

When any minor, above fourteen years of age shall be cited by the said chief justice to choose a guardian, and such minor shall refuse or neglect to appear, or when appearing, shall refuse to choose a guardian, or any guardian chosen by such minor shall be unable to give sufficient security, or shall refuse the trust; in every such case the orphans' court shall have the same power to appoint a guardian, as though such minor was under the age of fourteen years: *Provided, nevertheless,* That when a minor above the age of fourteen years shall choose a guardian, such minor may have that choice certified to the said chief justice, by a justice of the peace in the same county; which choice so certified, shall be deemed as good and valid as if done in presence of the said chief justice.

Sec. 45. *And be it further enacted,* That every orphans' court, appointing a guardian to a minor of his or her own election, shall take bond of such guardian, with good securities, in a sufficient sum, for the faithful execution of his office and trust. Court to appoint and take bond of guardians.

Sec. 46. *And be it further enacted,* That every guardian in soccage, or other guardian, shall, within three months after his appointment and acceptance of such office, deliver into the office of the register of the orphans' court an inventory, on oath, of all the estate, real and personal, which he shall have received, or taken possession of, to be entered of record, and shall exhibit once in every year, and oftener, if thereunto lawfully required, an account of the product of the said estate, and of the sale and disposition of such product, and disbursements: which accounts being examined and audited by the chief justice, in the same manner as executors or administrators' accounts, and reported, fairly stated and supported by vouchers, and ap- Guardian's accounts to be reported.

proved of by the court, shall be recorded in the register's office.*

Guardian defaulting, how to be proceeded against.

SEC. 47. *And be it further enacted*, That any guardian, who shall not deliver in such inventory, or render such account, shall, by order of the orphans' court, to which he is answerable, be summoned, and if he remain in default, compelled to perform his duty, or be displaced. And the said court may, for any good and sufficient cause, displace a guardian; giving such guardian fourteen days previous notice, by citation, to appear and show cause why he should not be displaced.

Guardians may be required to give additional security.

SEC. 48. *And be it further enacted*, That the orphans' court, when they at any time shall know or have cause to suspect that the securities of a guardian, or any of them, are in failing or dubious circumstances, may require and compel such guardian to give additional security or securities; and if he refuses or neglects so to do, may displace him.

Proceedings on the insufficiency of a ward's estate.

SEC. 49. *And be it further enacted*, That if the personal estate and rents, and profits of the real estate, be not sufficient for the maintenance and education of the ward, the orphans' court, on full investigation thereof, may, from time to time, order the guardians to sell such parts of the ward's lands, tenements, and hereditaments, as they shall direct and judge adequate to his or her maintenance and education.

Proceedings on the sale of lands by guardians.

SEC. 50. *And be it further enacted*, That the lands, tenements, and hereditaments, so ordered to be sold, shall be advertised by the guardian in three of the most public places in the county, and in some public newspaper in this territory, for the space of forty days previous to the time appointed for the sale thereof; and the guardian, at the time and place so advertised, shall sell the same at public vendue upon a credit of twelve months after the day of sale, to the highest bidder, who shall give bond with satisfactory security for the amount thereof; and shall make report in writing of his proceedings thereon, to the next orphans' court after such sale: *Provided*, That the said guardian may adjourn the said sales from time to time, at his discretion. And said guardian shall make a deed to the purchaser for the lands, tenements, and hereditaments so sold; which deed shall vest in the said purchaser as good and perfect an estate in the premises therein mentioned, as the ward was seized of or entitled to, at the time of making the said order.†

Guardian's deeds good.

Idiots, &c. to be examined by a jury.

SEC. 51. *And be it further enacted*, That the orphans' court are hereby authorized and empowered within their respective counties, on request made by the friends or relations of any idiot, lunatic, or person *non compos mentis*, or by the overseer of the poor for the district in which such idiot, lunatic, or person *non compos mentis* resides, or is an inhabitant, by writ, to direct the sheriff of the said county to summon twelve good, discreet, and lawful men of the county, and neighbourhood of

Intrusted to guardians.

Regulated as in the case of infants.

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* For the manner in which a Guardian may be compelled to settle his Accounts, see Title "Executors," chapter 9.

† See title "Executors," &c. chapter 2, and chapter 8.

the residence of such person, to make inquisition thereto on oath; and if the person said to be an idiot, lunatic, or *non compos mentis*, shall be adjudged by such inquisition (or the major part of them,) to be incapable of taking care of him or herself, and they shall certify the same under their hands and seals to the orphans' court, the said court shall assign some suitable person or persons to be the guardian or guardians to such idiot, lunatic, or *non compos mentis*, directing and empowering such guardian or guardians to take care of the person and estate, both real and personal, of such idiot, lunatic, or *non compos mentis*. And the said guardian or guardians shall make a true and perfect inventory of the said estate, and return the same within the same time, and account with the orphans' court, as often and in the same manner as guardians to minors are before directed by this act, and shall give bond and security in like manner; and the said court shall have the same power and control over such guardian or guardians, to all intents and purposes, as over guardians of minors.

NOTE.—In the Act concerning County Courts, passed in June, 1821, section 11, it is enacted, That inquisitions as to idiots, lunatics, or persons *non compos mentis*, may be ordered in vacation or in open court, and made returnable as process of citation on sufficient cause shown, the judge may order any such inquisition to be had before him; in other respects the same proceeding shall be had thereon as heretofore.

Guardian's duty to idiots, &c.

SEC. 52. *And be it further enacted*, That it shall be the duty of such guardians to improve frugally, and without waste or destruction, the estate of the idiot, lunatic, or person *non compos mentis*, and apply the income and profits thereof to the comfortable maintenance and support of such idiot, lunatic, or *non compos mentis*, and of his household or family, (if any there be;) and the said guardian or guardians are hereby empowered to collect, sue for, and recover all just debts due to such idiot, lunatic, or *non compos mentis*; and they shall also be subject to the payment of all just debts owing by such person, which were contracted when he or she was of sound mind, and before his or her distraction or lunacy, out of the personal estate; or if that be insufficient, then out of the real estate, in such way and manner as executors and administrators may by law discharge the debts of deceased persons, when the personal estate of such deceased is insufficient. And the said guardian and guardians shall have the same power and authority, by order of the orphans' court, to sell the lands, tenements, and hereditaments of any idiot, lunatic, or *non compos mentis*, for the purpose aforesaid, as by this act is given to executors and administrators in similar cases, observing the same rules and restrictions. And the deed or deeds of conveyance of such guardian or guardians, shall have the same force, effect, and validity, to all intents and purposes.

In certain cases, may sell real estate.

Idiots, &c. recovering, to resume their estates.

SEC. 53. *And be it further enacted*, That if any such idiot, lunatic, or *non compos mentis*, shall be restored to the use of his or her reason, and sanity of mind, (and on application, the same be made to appear to the orphans' court, who shall judge

Guardian's trouble to be compensated for.

thereof) the residue and remainder of his or her estate, both real and personal, shall be returned and delivered to him or her, the guardian or guardians, having such reasonable allowance for his or their charge and trouble, as the court shall order.

CHAPTER II.

Extracts from "An Act concerning Bastardy."—*Passed December* 13, 1811.

NOTE.—The first six Sections of this Act relate to the mode of determining who is to be responsible for the maintenance of an illegitimate child; will be found under title "Bastardy."

SEC. 7. *And be it further enacted*, That it shall be the duty of the court to appoint a guardian or guardians to said child, to whom, upon his or her entering into good and sufficient security for the faithful performance of his or her duty, the money (adjudged to be paid by the father) shall be paid over by the court.

NOTE.—The Act of 1819, regulating proceedings in the Courts of Common Law and Equity, Section 34, provides for the appointment of the guardians of infants and lunatics. See title "Inferior Courts."

CHAPTER III.

An Act to authorize Fathers to devise the Custody and Tuition of their Infant Children.—*Passed December* 28, 1822.

Fathers may devise the custody, &c. of their infant children.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That any father, even if he be not twenty-one years of age, may by last will and testament executed in the presence of two credible witnesses, devise the custody and tuition of his child, (which had never been married,) although it be not born, during any part of the infancy of such child, to whomsoever he will; and such devise hereafter to be made, shall give the devisee the same power over the person of the child as a guardian in common soccage hath, and authorize him by actions of ravishment of ward, or trespass, to recover the child with damages for the wrongful taking or detaining of him or her, for his or her use; and for the same use to undertake the care and management, and receive the profits of the ward's estate, real and personal, and prosecute and maintain any such actions and suits concerning the same, as a guardian in common soccage may do.

Guardians must declare acceptance in open court.

SEC. 2. *And be it further enacted*, That any guardian so appointed by the last will and testament of any person, shall appear openly in the county court, in which last wills and testaments are required by the existing law to be proved and recorded, before the exercise of any authority over the minor or his estate, and declare his acceptance of the guardianship, which shall be recorded; and shall give such bond and security, and in like manner, as is now required by law from guardians appointed by the county courts; and shall deliver an

To give bond.

inventory, on oath, of all the estate real and, personal, which he shall have received or taken possession of, within the same time after his acceptance of such office, and to the office of the same court to which other guardians are required by law to deliver inventories of the estates of their wards: *Provided*, that no child, the custody and tuition of which shall be devised as aforesaid, shall be taken from the mother of such child, before it attains the age of fifteen years; unless in the opinion of the court to which such guardian may be accountable, it would be improper for the mother to retain the possession of any such child.

Shall deliver inventory. Proviso.

SEC. 3. *And be it further enacted*, That the said guardians appointed as aforesaid, shall account as often, and under the same regulations, that other guardians are by law directed to account, and shall for failure to deliver an inventory as aforesaid, or to account agreeably to law, be liable to be proceeded against, and to removal from office as other guardians.

To account as other guardians.

SEC. 4. *And be it further enacted*, That if any guardian shall fail or neglect to appear in the county court where such last will and testament shall be proved and recorded, within the space of six months thereafter, he may be summoned and compelled to declare his acceptance or renunciation of such trust; and if every such guardian appointed by any such last will and testament, shall renounce the same, which renunciation shall be recorded; the said court may and shall proceed to appoint and qualify some other person or persons to the guardianship as if no such appointment of a guardian or guardians had ever been made.

May be compelled to declare or renounce guardianship.

SEC. 5. *And be it further enacted*, That this act shall take effect from and after the first day of January next.

Commencement.

HIGHWAYS, BRIDGES, AND FERRIES.—1818.

CHAPTER I.

An Act authorizing County Courts to grant Private Ways in certain Cases.— *Passed November 19, 1818.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That in all cases where no part of the tract of land owned by any individual in this territory, touches a public highway, the county court of such county may in their discretion, on the application of one or more persons, so situated, order and grant a private way, not exceeding fifteen feet in width, leading from the most convenient part of such tract of land to the nearest public highway; such order to be made in all cases, on the report of a jury, of the same number, and under

County court to grant private way.

Jury to report.

the same rules and restrictions, as are required by law in the case of public highways.

How kept in repair.

SEC. 2. *And be it further enacted*, That whenever a private way shall be granted in conformity with the provisions of this act, it shall be the duty of the person or persons, on whose application the same may be granted, to open and keep the same in repair, at his or their own expense, until regularly discontinued: *Provided*, that no such person or persons shall be thereby exempted from any duty required by law on public highways.

CHAPTER II.

An Act to establish a Public Road therein named.—*Passed December* 16, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That a public road be, and the same is hereby established, as follows, to wit: beginning on the great military road leading from Columbia in Tennessee to Madisonville in Louisiana, at or near the place where Samuel Craig now lives, on the west side of Big-shoal Creek in Lauderdale county; thence the nearest and best way to the Tennessee river, at the ferry opposite the town of Bainbridge, Franklin county; thence southeast from the southern part of said town, the nearest and best way to the county line between the counties of Lawrence and Franklin; thence south along said county line, wherever the situation of the ground will admit, and at all times as near the said line as practicable, to the southern boundaries of the counties of Lawrence and Franklin; thence the most eligible route to the falls of Tuskaloosa river.

Road to be laid out from the military road in Lauderdale to Tuskaloosa.

Manner of opening and keeping the road in repair.

SEC. 2. *And be it further enacted*, That the said road shall be opened and kept in repair in the following manner, to wit: The judges of the inferior court for the county of Lauderdale, shall at the first session after the first day of January, eighteen hundred and twenty, appoint five landholders of said county to view and report to said court at their next session, the best and nearest route for said road from the military road to the Tennessee river, as designated in the first section of this act, and the judges of the inferior court of said county of Lauderdale, shall appoint and direct an overseer, with a sufficient number of hands, to open and keep the same in good repair.

Commissioners appointed.

Their duties.

SEC. 3. *And be it further enacted*, That John B. Cobbs, Obadiah Waller, William Bryant, George Vandiver, Nicholas King, and Vance M. Cunningham, on the part of the county of Lawrence: and Levi J. Gist, Richard Ellis, Samuel B. Harris, William Skinner, William Mullen, and George Russel, on the part of the county of Franklin, are appointed commissioners, who, or a majority of them, are empowered, and are hereby required, to meet at Bainbridge, within twenty days after the end of the first session of the county court of the county of Franklin, in the year eighteen hundred and twenty; and the sheriff of the county of Franklin shall notify the commissioners of his county, of the time of meeting, (which he shall determine,) and also inform the sheriff of Lawrence county, giving him ten days notice, at least, of the time; and the sheriff of Lawrence shall summons the commissioners of his county; and the said commissioners, or a majority of them, shall proceed to view the route pointed out in the first section of this act, to the southern boundary of said counties of Lawrence and Franklin: and said commissioners shall divide the road by them so reviewed, into four divisions, as nearly equal in distance and labour as may be practicable; the first of which districts shall commence at Bainbridge, the overseers to which shall be appointed by the county court of Franklin county; the county court of Lawrence shall appoint the overseers for the second division; the county court of Franklin shall appoint an overseer to the third division; and the county court of Lawrence shall appoint the overseer to the fourth division. And all persons liable to work on public roads, within two miles of said road on either side thereof, shall be bound to assist in opening said road, and keeping the same in repair.

Sheriffs to notify commissioners.

Overseers, how appointed.

Who liable to work on road.

SEC. 4. *And be it further enacted*, That John Byler, of the county of Lawrence, and his associates, be, and they are hereby authorized and empowered to continue the said road from the southern boundary of the counties of Lawrence and Franklin, to the centre of the southern boundary of township numbered eighteen, of range numbered ten, west, the most eligible route which they can or may have discovered. And the said John Byler and his associates are hereby authorized, so soon as they have opened the said road, to erect a turnpike gate at some convenient place thereon; and persons travelling the road, shall pay to the said John Byler and his associates the following rates of toll, to wit: on a four wheel carriage and team, seventy-five cents; on a two wheeled carriage, fifty cents; on a man and horse, twelve and a half cents; on each pack horse, six and a fourth cents; for a loose horse, six and a fourth cents; for each head of cattle, one cent; for each head of hogs or sheep, half a cent. And if any person shall break through or round the said turnpike gate, with an intention to avoid payment as required by this act, they shall forfeit and pay for every such offence, triple the amount by them due to the said John Byler and his associates, to be recovered by an action of debt, before any judge or justice of the peace. And the said John Byler and his associates shall continue to keep said road in good repair, and to receive all the profits arising from the same, for the term of twelve years; at the expiration of which the same shall be held subject to the disposition of the Legislature of this state.

John Byler and associates may continue the road.

Erect a turnpike gate.

Rates of toll.

Penalty to avoid paying toll.

Road to be kept in repair.

SEC. 5. *And be it further enacted*, That so soon as John Byler and his associates may have opened the road to the centre of the southern boundary of township numbered eighteen, of range numbered ten west, and notice thereof being given by the said Byler or his associates, it shall be the duty of the judges of the

County court of Tuskaloosa to complete the road.

inferior court of the county of Tuskaloosa, to cause the residue of the road to the falls of Tuskaloosa river, to be viewed by five white male citizens of said county, who shall be sworn to mark the same, from the place of intersection, on the township line between townships eighteen and nineteen, the nearest and best way to the town of Tuskaloosa; and the judges of the inferior court of the county of Tuskaloosa aforesaid, are hereby required to appoint an overseer of said road, with hands sufficient to cause the same to be opened forthwith, and keep the same in good repair thereafter.

Commissioners to examine the road, to be appointed.

SEC. 6. *And be it further enacted*, That the county courts of Tuskaloosa, Franklin, and Lawrence, shall each appoint one commissioner, whose duty it shall be to examine that part of the aforesaid road, which is to be cleared by John Byler, twice in each year, and make report annually to the Legislature of this state, of the condition in which the said John Byler and his associates have kept said road; each of whom shall receive for his services two dollars for each day they may necessarily be engaged in viewing said road, to be paid by said John Byler and associates.

Commissioners to report to legislature.

CHAPTER III.

An Act appointing Commissioners to lay out a certain Road therein named. *Passed December 4*, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That John Harrison, John Herbert, and Charnock Therp, be, and they are hereby appointed commissioners, who, or a majority of them, are hereby authorized to lay out and mark the nearest and best way for a road to be opened, to begin at such point as they, or a majority of them, shall think best, on the new road leading from this State to the State of Georgia, which intersects the Old Federal Road in the Creek nation, in the eleventh and twelfth townships, and sixteenth or seventeenth range, and from such point of beginning, to the town of Cahawba. And in case the said commissioners, or a majority of them, shall find it practicable, that a road may be made on the said direction, it is hereby made their duty to report thereon to the next meeting of the Legislature.

Commissioners to lay out a road.

To be opened if practicable.

CHAPTER IV.

An Act to authorize the laying off and cutting out certain Roads therein mentioned.—*Passed December* 17, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That there shall be a road, commencing at the Falls of the Black Warrior, and running from thence the nearest and best route to the town of Cahawba, from thence to the town of Claiborne, and from thence to the town of Blakeley, on the Mobile Bay.

Road from Tuskaloosa, by Cahawba and Claiborne, to Blakeley.

SEC. 2. *And be it further enacted,* That there shall be another road, beginning at the town of Cahawba, from thence to the Choctaw corner, from thence to Coffeeville, from thence to Washington Court-house, from thence to the post road leading from St. Stephens to Natchez.

Road from Cahawba to Washington court-house.

SEC. 3. *And be it further enacted,* That the justices of the inferior court of each county, through which said roads may pass, shall appoint three commissioners on each road, whose duty it shall be to lay off and mark said roads through their respective counties, and appoint as many overseers on the same as may be necessary, and designate the points between which each overseer is to work, and apportion the hands under the same.

Commissioners to be appointed.

SEC. 4. *And be it further enacted,* That all persons liable to work on public roads, who live within two miles of said roads, shall work thereon.

Roads, when finished, to be reported to county court.

SEC. 5. *And be it further enacted,* That so soon as the said overseers shall have completed said roads, the commissioners shall report the same to the next inferior court of their respective counties.

CHAPTER V.

An Act to reduce into one the several Acts concerning Roads, Bridges, Ferries, and Highways.—*Passed December 21, 1820.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That all public roads and highways in the several counties of this state, that have been laid out or appointed by virtue of any act of the general assembly heretofore made, or by virtue of any order of court, are hereby declared to be public roads; and that at all times hereafter the county courts of the several counties of this state, shall have full powers to order the laying out public roads where necessary, and to discontinue such roads as now are, or shall hereafter be made, as shall be found useless, and to alter roads so as to make them more useful as often as occasion may require: *Provided,* That the courts of the several counties of this state shall, in no instance, grant an order on any petition for any new public road, unless the person or persons petitioning for such road shall have given at least thirty days notice by advertisement of his or their intended application, stuck up at the court-house, and three other public places in the county in which the said road may be.

Roads now established declared public.

Roads may be discontinued.

Notice of application for new road, to be given.

SEC. 2. *Be it enacted,* That all roads hereafter ordered to be made, shall be laid out by a jury of freeholders or householders, to be appointed by the county court; and said jury shall consist of seven persons, who shall be instructed by the court to lay out the road so ordered to the greatest advantage of the inhabitants, and as little as may be to the prejudice of enclosures, &c.; and the said jury shall take the following oath, to wit:— "I, —— ——, do solemnly swear, that I will lay out the road

Oath of Jury.

Width of roads.

Injury to private property how ascertained.

Damages how paid.

now directed to be laid out, by the order to us directed from the county court, to the greatest advantage to the public, and with as little prejudice to enclosures as may be, without favour or affection, malice or hatred, and to the best of my skill and knowledge: So help me God." And all public roads shall not be less than thirty feet wide, and completely cleared of all trees, bars and impediments, and stumps not to exceed four inches above the ground; and in all cases where a new road is established, the owner or owners of the land over which such road passes, may at the next term of the county court, apply to said court for damages, for the injury which he, she, or they may have sustained by the establishment of such road; and it shall be the duty of the court to cause a jury to be empannelled, to inquire of such damages, in which inquiry the jury shall take into consideration the advantages and disadvantages accruing to such applicant by the establishment of such road, and give their verdict accordingly: and the damages, if any shall be assessed, shall be paid out of the county treasury.

Who liable to work on roads.

Who exempt.

Sec. 3. *Be it further enacted*, That all free white male persons, between eighteen and forty-five years of age, and all male slaves, and other persons of colour over eighteen and under fifty years of age, shall be liable, and it is hereby made their duty to work on, clear out, and repair the public roads of this state, under such provisions and regulations as are herein after made: *Provided nevertheless*, That no licensed ministers of the gospel, or instructers of public and private schools, shall be liable to work on public roads.

County court to lay off districts, and appoint overseers.

Commissioners to apportion hands.

To be delivered to overseer.

Penalty for failing to deliver order.

Sec. 4. *And be it further enacted*, That the county courts of the respective counties shall have full power, and they are hereby required to divide the public roads into districts, or precincts, and shall annually appoint one overseer for each district or precinct, and shall at the same time nominate and appoint such persons as they may deem necessary, within their respective counties, who shall apportion the hands liable by law to work on public roads, among such overseers as they shall direct; and the clerk of every county court shall, within ten days after the apportionments so made, deliver a copy of the order to the sheriff of the county, and the sheriff shall within ten days after the receipt of such order, deliver the same to the overseer, and it shall be the duty of such overseer, on receiving his appointment and the order of apportionment, to deliver said order to the commissioners of apportionment, or any one of them, whose duty it shall be to apportion the hands so divided, within five days thereafter; and on failure of the clerk or sheriff to deliver such order herein directed, each shall forfeit and pay on every such failure, ten dollars; which fines shall be recovered by judgment, on motion in the circuit court, without the interposition of a jury, unless the same shall be demanded by the defendant, which motion shall be made by the solicitor of the circuit in which such defaulter resides: *Provided, however*, That in all cases it shall be the duty of the solicitor to give to such defaulter three days notice; and in all cases of such failure, the certificate of a commissioner of apportionment, shall be deemed sufficient evidence.

Post up list of overseers.

SEC. 5. *And be it further enacted,* That the clerks of the several county courts of this state shall put up in their respective court-houses, on the first day of each circuit court, a list of the names and precincts of all the overseers of the roads in the county; and on neglect, shall forfeit and pay for each failure, ten dollars, to be recovered on motion made by the solicitor to the circuit court, as prescribed in the fourth section of this act.

Penalty for refusing to serve as overseer.

Overseer to notify clerk of his acceptance or non-acceptance.

Proceedings in case of refusal.

Penalty how recovered.

Proviso.

SEC. 6. *And be it further enacted,* That every person refusing to serve as an overseer on any road agreeable to the order of the court of the county in which he resides, without a reasonable excuse, to be judged of by the circuit court, shall forfeit and pay the sum of forty dollars: And it shall be the duty of every person appointed an overseer, to notify the clerk of his county of his acceptance or refusal to act, within ten days after he receives notice of his appointment to the said office, under the penalty of ten dollars for neglect, and if any overseer shall notify the clerk of his refusal to act, the clerk shall forthwith report the same to two justices of the peace of the neighbourhood where such overseer resided, who are hereby authorized and required to appoint a successor to serve for the residue of the term, and such new overseer so appointed shall be subject to the same penalties and forfeitures as the overseer appointed by the county court: and the penalty for refusing to accept, and for failing to notify the clerk of his refusal or acceptance, shall be recovered by judgment in the circuit court, on motion of the solicitor, as is prescribed by the fourth section of this act, and the certificate of the clerk of the county court, in all cases of forfeiture incurred under this section of this act shall be deemed sufficient evidence: *Provided nevertheless,* That no person shall be compelled to serve as an overseer more than one, in any three successive years.

Overseer to demand list of hands.

Copy to be returned to county court.

Penalty for refusing to give a list.

How recovered.

SEC. 7. *Be it further enacted,* That it shall be the duty of every overseer of the road, immediately after his appointment and the apportionment of the hands, to demand a list from every person within his district or precinct, of all the hands he has in his possession, himself included, liable to work on roads, which demand shall be made in person, or in writing left at the usual place of abode of the person applied to, a copy of which list the said overseer is hereby required to return to the county court, at the next succeeding term; and if any person shall refuse, or neglect for the space of ten days, to deliver a list thus required to said overseer, such person so refusing or neglecting, shall forfeit and pay the sum of six dollars for each hand liable to work, so refused or neglected to be given in or returned, to be recovered on motion of the solicitor, to the circuit court, as prescribed in section fourth of this act, and the evidence of the overseer shall be deemed sufficient proof of such refusal or neglect.

Notice to be given to hands.

SEC. 8. *Be it further enacted,* That it shall be the duty of the overseer of any road to give three days previous notice by sum-

Penalty for refusing to work.

Excuse to be heard.

How recovered.

mons in person, or in writing left at their respective places of abode, to all free male persons, as well as to the owner, overseer, or overseers of slaves liable to work on roads, as apportioned by him to meet at such times and place as he may appoint, and to bring with them such tools to work with on the road, as he may direct, and if any free person so summoned, shall fail to attend, or send a substitute to work in his place, or when attending, shall neglect or fail to do and perform his or their duty therein, he or they shall forfeit and pay a fine of one dollar per day each, for every such failure, non-attendance, or refusal: And if any slave or slaves fail to attend agreeably to the summons of the overseer of the road to the owner or overseer of such slave or slaves, then and in that case, the owner, owners, or overseer (as the case may be) shall forfeit and pay one dollar per day for each and every slave that shall fail to attend as aforesaid; *Provided*, That all reasonable excuses shall be heard and allowed. And it shall be the duty of the overseer to return under oath a list of all hands apportioned him within his district or precinct, who may not have worked when by him called out, and said county court shall cause the clerk of said court to deliver a certified copy of the same, in charge of the tax collector of such county, who shall collect the same in the same manner as the taxes of each county, which he shall, when collected, pay over to the clerk of said court: *Provided nevertheless*, that if any overseer returns an incorrect list to the county court, any person injured thereby may receive the amount of any damage sustained by him or them by an action of debt, before any justice of the peace or court having jurisdiction thereof.

Overseer to measure roads and set up posts.

Index boards.

Penalty for failure or neglect.

SEC. 9. *Be it further enacted by the authority aforesaid*, That it shall be the duty of all overseers of public roads, to measure all roads, and to set up posts at the end of each mile, leading from the court-house, or some noted place or town in their respective counties, and to mark on the said posts in large legible figures, the distance in miles to their said court-house, or some other noted place or town; and when a post so erected shall be removed by any means whatever, the overseer of the road shall cause the same to be replaced by another, to be put down in the same place, marked as on the one removed: it shall also be the duty of overseers of roads, to affix at the forks of all public roads in their respective districts or precincts, index boards, pointing at, with directions to, the most noted places to which they lead; and on failure to put down mile posts marked as aforesaid, or index boards as aforesaid, the overseer of such road, for each failure or neglect, shall forfeit and pay the sum of five dollars, to be recovered by judgment of the circuit court, on motion of the solicitor, as prescribed in the fourth section of this act.

Number of days liable to work.

SEC. 10. *Be it further enacted by the authority aforesaid*, That overseers of the road shall have power to call out all persons apportioned to work on their respective roads, within their precincts or districts, at any time, and at all times when they think proper: *Provided nevertheless*, That no person shall be compelled to work on more roads than one in any one year, nor more than ten days on any road.

Penalty for turning road.

Sec. 11. *Be it further enacted by the authority aforesaid*, That if any person or persons whatsoever shall alter or change any public road, unless it be by order of the county court of the county, founded upon the report of a jury appointed and sworn as in the case of laying out new roads, they shall, on conviction of every such offence, be fined ten dollars for each month the road is turned out of the old course, and that the old road shall in no case be shut up until the overseer shall certify to the court that the newly opened road is in good and sufficient order. Nor shall any person or persons erect, or cause to be erected across any public road, any fence, bar, impediment, or shall fall a tree or brush on the same, and shall not remove and clear away such fence, bar, impediment, tree, or brush within twenty-four hours thereafter, he or they shall forfeit and pay five dollars for every such offence, and shall moreover be liable to pay five dollars for every twenty-four hours after the first day that the said fence, bar, impediment, tree, or brush remains in the said road; and it shall be the duty of the overseer of the road turned as aforesaid, or on which such impediment may be, to lodge information with the solicitor of the county in which the same may be, and the circuit court shall enter up judgment against the offender or offenders as prescribed in the fourth section of this act, for the amount of the penalty incurred. And the oath of the overseer of the precinct or district, shall in all cases be deemed sufficient evidence.

Penalty for obstructing road.

Causeways to be erected.

Sec. 12. *Be it further enacted by the authority aforesaid*, That when to the overseers of roads it may appear expedient to make or repair causeways on the same, said overseers shall make them at least fourteen feet wide, and the earth necessary to cover the said causeways shall be taken from both sides of said causeway equally, and so as to form a drain on each side.

Bridges may be erected.

Sec. 13. *Be it further enacted by the authority aforesaid*, That when a bridge shall be necessary over any place where the overseers with his assistants cannot conveniently make it, the court of the county wherein such place may be, is hereby empowered and required to contract and agree for the building, keeping, and repairing thereof, and to lay the charge on their county by tax or otherwise; and where bridges shall be necessary over any such creek or river, which divides one county from another, the court of each county shall join in the agreement for building, keeping, and repairing the same; and the charge thereof shall be borne and defrayed by both counties, in proportion to the amount of taxables in each; and all and every contract, agreement, and order, by the several county courts in this state entered into, or made for or concerning the building, keeping, or repairing of bridges or causeways, in such manner as to them shall seem most proper, shall be good against them and their successors in office.

Bridges over waters dividing counties, how erected.

Penalty on overseers for neglect of duty.

Sec. 14. *Be it enacted by the authority aforesaid*, That every overseer of any road who shall fail or neglect to keep the roads, bridges, and causeways, within his district, or precinct, clear and in good repair, or permit them to remain uncleared, or out of repair for fifteen days at any one time, unless hindered by high water, bad weather, or other sufficient cause, to be adjudged of by the court having jurisdiction of the same, such overseer shall forfeit and pay for every such offence twenty dollars, to be recovered by judgment of the circuit court on motion made by the solicitor, as prescribed in section fourth of this act: *Provided nevertheless*, that payment of this penalty shall not prevent any persons who may have sustained damage by the road being out of order, from recovering the amount of such damage from such overseers.

Roads may be divided into different compartments.

Sec. 5. *Be it further enacted by the authority aforesaid*, That it shall and may be lawful for any overseer, if required by a majority of the hands on the road within his district or precinct, to mark out such road in equal compartments for the ease of the labourers, who shall finish his or their part within the time agreed on between said overseer, and each free person, master, mistress, or overseer, and in default of any agreeing party, the overseer shall be, and he is hereby authorized to cause the same to be done by hire of other persons, and thereon to tender his account and demand payment of said defaulter or defaulters,—and on refusal, to warrant for the same before some justice of the peace; *Provided*, that the overseer shall in no case give a longer time than ten days to any hand to do the work apportioned or marked out for him.

Ferries how established.

Sec. 16. *Be it further enacted by the authority aforesaid*, That at all times hereafter the county courts in this state, shall have power to establish ferries, and order them under such regulations as is herein after directed.

Keepers to give bond.

That before any person shall open or establish a public ferry in this state, he shall first apply to the county court of the county in which such ferry may be, and the court for good cause shown by the party applying, may grant a license to establish a ferry, and shall affix the rate of toll or ferriage, on all persons, horses, cattle, or carriages, &c. that may pass the same, and shall moreover require from the person or persons so applying for license, to give bond with good and sufficient security in the sum of one thousand dollars, payable to the chief justice and his successors in office, of the county in which the ferry may be. Conditioned, that the person or persons to whom said license may be granted, that he or they will constantly provide and keep good and sufficient boats, also the banks on each side of the watercourse in good repair, and that said ferry shall be well attended for travellers or other persons to carry or pass their horses, carriages, or effects over such river or watercourse.

No ferry shall be established within two

Sec. 17. *Be it enacted by the authority aforesaid*, That where land is owned by the same person on both sides of a river, over which it may be necessary to establish a ferry, such persons miles of one already established.

shall have the ferry established on his land on both sides if he desires it, unless public convenience would be thereby prejudiced; but if the land of such person is most suitable on one side of such river, and not on the other, then the court may establish such ferry, so as to produce the most public good and least private injury; no public ferry shall be established within less than two miles by water of any ferry already established, unless on any river at or within two miles of any town. *Provided nevertheless*, that any ferry may be established on any sixteenth section, whenever the trustees of said sixteenth sections think it advantageous to the township in which said section may be.

County courts may establish toll bridges.

SEC. 18. *Be it further enacted by the authority aforesaid*, That the county court, through whose county large creeks, or watercourses pass, over which it may be too burthensome to build bridges by a county tax, it is hereby made lawful for such county courts to contract with any person or persons to build a toll bridge or causeway, for which the court is hereby authorized to lay the toll to be levied, on all persons, horses, cattle, and carriages passing over the same, to be granted to the undertakers for such a number of years as the said court may agree upon for the building such bridge or causeway; and the builder, or builders, and their successors, shall keep in constant repair, and in default thereof, the owners of such bridge or causeway shall and are hereby declared to forfeit all right and title to the toll thereof.

Keepers of toll bridges to give bond.

SEC. 19. *Be it further enacted by the authority aforesaid*, That the county court, before granting a license to any person or persons to build a toll bridge or causeway as authorized in the seventeenth section of this act, shall take a bond in the same way and manner as is prescribed in establishing ferries, for a sum not exceeding one thousand dollars; and if any person or persons shall at any time sustain damage in consequence of any ferryman or owner of the ferry, or keeper of a toll bridge or causeway not having complied with the conditions of his or their bond, the person or persons so damaged may bring an action of debt against such ferryman or owner of such ferry, or keeper of a toll bridge or causeway, on his or their bond, in the name of the court of the proper county, and recover judgment for the non-performance of the said conditions, for so much damages as he, she, or they may have sustained, and thereupon take out execution, and cause the money to be made, and when made to apply the same to his, her, or their use, which bond shall not be void upon the first or any other recovery; and it shall and may be lawful for any person or persons detained at any public ferry by reason of the ferryman's not having good and sufficient boats, or other proper craft, and hands, or by neglecting to do his duty, may by warrant from a justice of the peace, recover of such ferryman, or owner of such ferry, the sum of ten dollars for every default or neglect; *Provided*, That any such recovery shall not be a bar to any action for damages sustained by any person by reason of insufficiency of said ferries and bridges.

Penalty for non-performance or neglect of duty.

Penalty for establishing ferry without license.

SEC. 20. *Be it further enacted by the authority aforesaid*, That if any person or persons shall establish a public ferry, or a public road, toll bridge, or causeway, contrary to the provisions of this act, he or they shall forfeit and pay five hundred dollars, for every public ferry and public road, toll bridge, or causeway, so established, to be recovered by indictment, or presentment by a grand jury in the circuit court of the county or counties in which such ferry, toll bridge, or causeway, shall be so established, and every person or persons who may have any licensed ferry, toll bridge, or causeway, and who shall demand and take a greater toll than is allowed him or them by law, or by order of the county court, shall forfeit and pay the sum of five dollars for each and every such offence, to be recovered by indictment, or presentment of a grand jury, as prescribed in the foregoing part of this section.

Penalty for demanding unlawful toll.

Judges to give this act in charge to grand jury.

SEC. 21. *Be it further enacted by the authority aforesaid*, That it shall be the duty of the judges of the several circuit courts of this state, to give in charge to the grand juries of the different counties, at the opening of each term of said courts, this act; and the said grand jury shall present the overseers of every public road, bridge, and causeway, as well as the owners and keepers of the toll bridges, causeways, and ferries, which shall not, or may not have been kept in such order and repair as required by law, and every person or persons who may have altered any public road, without having obtained an order of court therefor, as is directed by the provisions of this act, or any such person or persons, who may have erected any fence, or bar, impediment, or fell trees or brush in any public road, contrary to this act; and it shall be the duty of the solicitor of the circuit courts, upon such presentments made by the grand jury, after giving such defaulter three days notice, to move the court for judgment against such defaulter or defaulters, in the same way as is prescribed in the fourth section of this act; *Provided, however*, That the court shall hear the excuse of any overseer or other person, who may have violated the provisions of this section of this act, and on good cause being shown for default, then and in that case, no judgment shall be awarded.

Overseer to contract for mile-posts and index boards.

SEC. 22. *Be it further enacted by the authority aforesaid*, That all the overseers of roads in this state, may, and are hereby authorized to contract with a carpenter to make all mile posts and index boards necessary for his district or precinct, of good durable wood, and for cutting the figures on the former, and for painting the latter, both of which shall be done in a good and proper manner, and it shall be the duty of said overseer to attest his account, and deliver the same to the county court, who shall order the amount to be paid by the county treasurer, out of any moneys in the treasury belonging to the road fund.

Overseers may exchange service of hands for use of wagons.

SEC. 23. *Be it further enacted by the authority aforesaid*, That when it may be necessary to use a wagon to haul materials for any bridge, causeway, or other purpose in repairing roads, the overseer of such road is hereby authorized to exchange the labour of any hands bound to work on such road, for the use of a wagon or wagons, and teams to be employed as aforesaid, and if any overseer finds it impracticable to make such arrangement, he is hereby authorized to hire a wagon or wagons when necessary, and present his account on oath to the county court, for the hire of the same, who shall pay the amount out of any moneys in the county treasury belonging to the road fund.

Hands within certain districts liable to work.

Sec. 24. *Be it further enacted by the authority aforesaid*, That all persons liable to work on public roads, living within five miles of any part of any public road, may be apportioned to work on the same, and all persons liable to work on public roads, living within three miles of any new road about to be opened, shall work on the same: *Provided nevertheless*, That persons liable to work on public roads, living within ten miles of the state road, leading from the town of Cahawba to the town of Claiborne, and which was established by an act of the general assembly, passed at Huntsville, on the seventeenth day of December, one thousand eight hundred and nineteen, may be apportioned to, and compelled to work on the same; *And provided also*, That all persons liable to work on public roads, and living within ten miles of the main public road, leading from the town of St. Stephens to the city of Mobile, and south of Bassett's creek, on said road, shall work on the same: *Provided*, That it shall be the duty of all persons liable to work on public roads, to work on some road; and when any person or persons live at a greater distance than five miles from any road, they shall be apportioned to work on that nearest them.

Proviso.

No new road to be opened between March and July.

Sec. 25. *Be it further enacted by the authority aforesaid*, That no new road shall be cut out hereafter, between the first day of March and the tenth day of July of each and every year.

All fines to be paid to county treasurer.

Sec. 26. *Be it further enacted by the authority aforesaid*, That it is hereby made the duty of all overseers, justices of the peace, clerks of the inferior and circuit courts, or other officers, into whose hands may be paid any moneys arising from fines, penalties, or forfeitures, under this act, to pay the same over to the county treasurer of the county in which the same may be, within ten days after the same may come to his or their hands; and if any overseer, justice of the peace, clerks of the inferior or circuit court, or other officer, fails or neglects to do so, he or they shall forfeit and pay for every such failure or neglect, the sum of sixty dollars, to be recovered by judgment of the circuit court, had on motion of the solicitor of the district, as prescribed in the fourth section of this act.

Treasurer to keep an account of road funds.

Sec. 27. *Be it further enacted by the authority aforesaid*, That it shall be the duty of the county treasurer of the several counties in this state, to receive all moneys directed to be paid them by this act, and to keep a separate and distinct account of the same under the title of "Road Fund," which moneys shall be exclusively under the control of the county court, and shall be appropriated by them only for the purpose of opening new roads, building and repairing bridges, causeways, and public roads.

Penalty for defacing mile posts and index boards.

SEC. 28. *And be it further enacted*, That if any person shall be guilty of defacing or pulling down any mile post or index board, and being convicted thereof before any justice of the peace for said county, shall forfeit and pay ten dollars for every such offence, to be applied to the improvement of such road.

Repealing clause.

SEC. 29. *Be it further enacted by the authority aforesaid*, That this act shall take effect from and after the passage thereof, and that all acts and parts of acts, now in force in this state on the subject of public roads, bridges, causeways, and ferries, be, and the same are hereby repealed.

Penalty for neglect of duty in commissioners.

SEC. 30. *And be it further enacted*, That all commissioners appointed by the court, to lay out roads, and to apportion hands on any road, who may refuse or neglect to perform the duty assigned him or them, shall each forfeit and pay for every such failure or neglect, the sum of ten dollars, to be recovered as is provided in the fourth section of this act: *Provided nevertheless*, That such fine shall not be imposed when a good and sufficient excuse may be offered.

Defaulters may make excuse.

SEC. 31. *And be it further enacted*, That in all cases of default in working on roads, or in apportioning hands to work on public roads, the defaulter may make his excuse, on oath, before the nearest magistrate, which shall be subscribed by said defaulter, and certified by said magistrate, and the court shall determine on such certified deposition whether such fine shall be imposed.

CHAPTER VI.

[*] An Act to lay Taxes on the inhabitants of Washington County.—*Passed December* 20, 1820.

County court authorized to levy tax.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the county court of Washington county be, and they are hereby authorized, in addition to the tax now authorized by law, to lay on the inhabitants of said county a tax, not exceeding one fourth of the state tax; which tax shall be assessed and collected in conformity with the laws regulating the assessing and collecting of taxes now in force.

How appropriated.

SEC. 2. *And be it further enacted*, That so much of the said tax as may be necessary, shall be applied to the payment of the bridges built over the Sintabogue and Pine Barren creeks, in conformity with an act of the legislature of the Alabama territory, entitled " An Act authorizing the building of Bridges over Sintabogue and Pine Barren creeks in Washington county," passed 13th February, 1818.

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[*] Amended in December, 1821.

CHAPTER VII.

An Act amendatory to an Act passed by the Legislature of Alabama, at Huntsville, the 16th December, 1819, entitled "An Act to establish a Public Road therein named."—*Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Hance M. Cunningham, William Russell, and Hanby Files, be, and they are hereby appointed commissioners to view a road cut out and opened by John Byler and his associates, under provisions of the above recited act; to confer with the said John Byler and his associates, and ascertain the expense which has been incurred in opening said road, and the probable expense which may accrue from the completion of the same, and also to take into consideration the present rates of turnpikage as allowed by law, and report the result of their proceedings and deliberations to the next general assembly; for which service they shall receive two dollars for each and every day they may be necessarily employed in the duties above assigned them, to be paid by the said John Byler and his associates.

Commissioners appointed

to ascertain situation of road.

SEC. 2. *And be it further enacted,* That the county court of Lauderdale, at their next session after the first day of January, one thousand eight hundred and twenty-one, appoint five commissioners to view out a road leading the nearest and best way from the foot of the Muscle Shoals to intersect the Military road in a direction for Columbia, and report to the next succeeding court, who shall order the same to be opened and kept in repair, according to the existing laws respecting public roads.

County court of Lauderdale to appoint commissioners.

CHAPTER VIII.

An Act appointing Commissioners to lay out a Road on or near the dividing Line between the Counties of Madison and Limestone.—*Passed November* 30, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Thomas Love, James Bailey, Jesse Posey, Edward Massey, and James B. Lockhart, be, and they are hereby appointed commissioners to lay out and mark the best way for a road to be opened, to begin at Crabb's Ferry on the Tennessee river, in Madison county; from thence in a direct line as near as the nature of the ground will admit, to the dividing line between the counties of Madison and Limestone; from thence north along the dividing line between the counties aforesaid, to the northeast corner of a quarter section of land lately owned and occupied by William Whitaker, esq. on said dividing line;* from thence the nearest and best way to Colonel Burris's store,

Commissioners.

Course of road.

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* Altered by an Act of the next session.

(paying due attention to private property,) near said dividing line, between the counties aforesaid.

County to appoint overseers.

SEC. 2. *And be it further enacted*, That the justices of the inferior courts of the counties of Madison and Limestone, shall appoint from each of the counties aforesaid, two overseers of said road, and designate the points between which their respective overseers shall work; the justices of the inferior courts aforesaid, shall also appoint from each of the counties aforesaid, two persons to apportion the hands to work under their respective overseers.

Commissioners to report.

SEC. 3. *Be it further enacted*, That so soon as the overseer shall have completed said road, the commissioners shall report the same to the succeeding inferior courts of their respective counties.*

CHAPTER IX.

An Act to establish a Public Road from the Southern Boundary Line of Township eight, in Range four or five, West of the Basis Meridian of Huntsville, to the Falls of Tuskaloosa.—*Passed December* 18, 1820.

Road established.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That a public road leading from the southern boundary line of township eight, in range four or five, west of the basis meridian line of Huntsville, by the nearest and best route to the falls of Tuskaloosa river, be, and the same is hereby established.

By whom opened.

SEC. 2. *And be it further enacted*, That Thomas D. Crabb and his associates be, and they are hereby authorized and empowered to lay out and open said road from the said eighth township line, in range four or five west as aforesaid, by the most eligible route which they have, or hereafter may discover.

Turnpike gates.

SEC. 3. *And be it further enacted*, That the said Thomas D. Crabb and his associates be, and they are hereby authorized, so soon as they shall have laid out and opened said road, to erect two turnpike gates thereon, at some convenient places, as nearly equidistant from the two extremes of said road as may be practicable.

And the said Thomas D. Crabb and his associates may demand and receive of and from each and every person who shall or may travel on said road, and pass through the said gate or gates; at each gate the following rates of toll, to wit:

Toll rates.

Penalty for passing round to avoid toll.

For every four wheel carriage, thirty-seven and a half cents; for every two wheel carriage, twenty-five cents; for every man and horse, twelve and a half cents; for every pack horse, six and a fourth cents; for every loose horse, six and a fourth cents; for every head of cattle, one cent; and for every head of hogs or sheep, one half cent. And if any person shall pass round, or through said gate, with intent to avoid the payment of toll, he or she shall, for every such offence, forfeit and pay to the said Thomas D. Crabb and his associates, treble the amount which his, her, or their toll would have been, to be recovered before any justice of the peace, with legal cost for the same.

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* See chapter 33 of this title, for an amendment of this Act.

SEC. 4. *And be it further enacted*, That the county court of Cotaco shall appoint two or more persons, who shall view said road established by virtue of this act; and they shall decide, whether in their opinion the road is completed in a good and sufficient manner, that wagons carrying two thousand pounds, and drawn by four horses, can conveniently pass the same.

Commissioners to be appointed to view the road.

SEC. 5. *And be it further enacted*, That it shall be the duty of the county court of Cotaco, when application is made, or in their opinion it is necessary, to appoint two or more commissioners to examine said road, and report their opinion to the county court. And if in the opinion of the commissioners appointed by virtue of this act, the road is not in good and complete order, they shall direct the turnpike gates to be opened, and no toll shall be demanded or received under the penalty of twenty dollars.

No toll whilst the road is out of repair.

And should the said Thomas D. Crabb and his associates be convicted of receiving toll, when the gates are directed to be opened the second time, they shall forfeit all rights, privileges, and immunities under this act.

Penalty for exacting toll.

SEC. 6. *And be it further enacted*, That when the turnpike gates have been opened, and the said Thomas D. Crabb and his associates shall conceive the road repaired in a good and sufficient manner, they shall apply to the county court of Cotaco, to appoint two commissioners to view and report said road, under their hands and seals; and the report of the commissioners shall be entered of record by the clerk of the county court, and then it shall be lawful for the said Thomas D. Crabb and his associates, to receive the tolls allowed by virtue of this act; *Provided*, the commissioners are of opinion the road is in sufficient repair. And the commissioners appointed by virtue of this act, shall receive such compensation as the county court may direct, to be paid by the said Thomas D. Crabb and his associates.

Commissioners' report to be recorded.

Commissioners' compensation.

SEC. 7. *And be it further enacted*, That the said Thomas D. Crabb and his associates shall commence the said road within six months, and the same shall be completed within eighteen months.

Road when to be opened.

And the said Thomas D. Crabb and his associates shall have all benefits and profits arising from the tolls, for the period of twelve years.

CHAPTER X.

Resolution appointing Commissioners to review and mark out a Road from the Military Crossing of the Buttahatche to the Falls of Tuskaloosa.—*Passed December* 20, 1820.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That John Casey, George Poe, Manly Files, —— Eddy, and Isaac Adair

Commissioners to review and mark out a road.

be, and th[illegible] or a majority of them, are hereby appointed commissioners, to review and mark out a road, the nearest and best way from the Military Crossing of the Buttahatche river, to the falls of Tuskaloosa: which commissioners, before they enter upon their duties, shall take and subscribe the usual oath directed to be taken by road commissioners, and report their proceedings to the county court of Marion and Tuskaloosa, whose duty it shall be forthwith to cause such road to be opened according to the existing road laws.

To take oath.

To report to county court.

CHAPTER XI.

An Act granting to John Fowler the Right of running a Steam Ferry Boat between the City of Mobile and the Town of Blakeley.—*Passed December 20, 1820.*

Ferry established.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That it shall be lawful for John Fowler, of the town of Blakeley, and his assigns respectively, to set up, keep, maintain, and run a steam ferry boat between the town of Blakeley and the city of Mobile, in this state, for and during the term of five years, to be computed from the first day of January next; and the said steam ferry boat shall be capable of carrying six horses, and shall be ready at all times and seasons to transport and ferry from one to the other of the said towns, persons, goods, and chattels.

John Fowler to give bond.

SEC. 2. *And be it further enacted*, That the justices of the county court of the county of Mobile may and shall require of the said John Fowler a bond, with a suitable penalty, and two good and sufficient securities, for the faithful performance of the requisitions of this act, and the said county court shall annually order, direct, and determine the several rates of ferriages, and the several hours in each day that the said steam ferry boat shall be in readiness for the purposes aforesaid.

Penalty for exacting extra toll.

SEC. 3. *And be it further enacted*, That if the said Fowler, or his assigns, or any ferryman, or person employed by him, shall exact, take, or receive any greater or higher rates for transporting any person or persons, horses or cattle, goods, or other things whatsoever, than shall be by the justices of the county court aforesaid limited or established, he or they so offending, shall forfeit and pay for every such offence the sum of ten dollars, to be recovered before any justice of the peace, or any justice of the county court aforesaid, by any person who shall sue for the same.

Exclusive privilege of ferry.

SEC. 4. *And be it further enacted*, That if any person or persons shall, after the first day of January next, transport or carry over for pay or hire, from either of the towns aforesaid, to the other, any person or persons, horses or cattle, other than the said John Fowler or his assigns, such person or persons shall for every such offence forfeit and pay the sum of ten dollars, to be recovered by any person or persons who may sue for the same: *Provided always*, That nothing in this act shall be so construed as to exclude any person or persons from the right of carrying themselves, their goods or chattels, in their own boats, free of ferriage.

Forfeiture of privilege.

SEC. 5. *And be it further enacted*, That if it shall appear to the justice of the county court of the county of Mobile, that the said John Fowler, or his assigns, shall neglect or refuse to comply with the requisitions of this act, it shall and may be lawful for the justices aforesaid to declare all the rights and privileges herein granted to be forfeited; and the said justices shall and may let out the said ferry to any other person or persons, agreeably to the laws now in force on that subject.

Accountable for damages.

SEC. 6. *And be it further enacted*, That if any person or persons shall suffer any loss or damage in their property or persons, by reason of the neglect or wilful misconduct of the said John Fowler or his assigns, or of any ferryman, or person employed by him, the said John Fowler, or his assigns, shall be liable to an action by the party aggrieved.

CHAPTER XII.

An Act to repeal part of an Act therein named, and for other purposes.—*Passed June* 16, 1822.

Repealing clause.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That so much of an act passed at Cahawba, on the 30th day of November, 1820, entitled "An Act to appoint Commissioners to lay out a Road on or near the Dividing Line between the Counties of Madison and Limestone; authorizing Commissioners therein named to lay out a Road from the Northeast corner of a Quarter Section of land lately owned by William Whitaker, Esquire, to Colonel Burris's Store," be, and the same is hereby repealed.

Width of public roads

SEC. 2. *And be it further enacted*, That overseers of public roads in this state shall not be compelled to clear the roads more than twenty feet wide, cutting the stumps so as not to exceed six inches high; any law to the contrary notwithstanding: *Provided nevertheless*, That lanes through which public roads may pass, shall be at least thirty feet wide.

CHAPTER XIII.

An Act authorizing the Collection of Toll at the Cahawba Bridge.—*Passed June* 16, 1821.

Ferry rates.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the town council of Cahawba be, shall and they are hereby authorized to receive toll at the Cahawba bridge, at the following rates, to wit: for man and horse, six and one quarter cents; for each led or loose horse, three cents; for each head of cattle, two cents; for each head of sheep, two cents; for each head of hogs, one cent; for each loaded wagon and team, fifty cents; for each wagon and team not loaded, twenty-five cents; for each four wheel pleasure carriage, fifty cents; for each two wheel pleasure carriage, twenty-five cents; and all other two wheel carriages, twenty-five cents each.

Proceeds, how applied.

SEC. 2. *And be it further enacted*, That the town council shall apply the proceeds arising from the toll so collected, at least once in three months, towards defraying the expenses which have been or which may be hereafter incurred, in building and completing said bridge, and shall cause to be made out a fair statement of all sums collected under and by the authority of this act, and shall lay the same before the legislature at their first meeting in the year one thousand eight hundred and twenty-two, showing in what way and to what purposes the same may have been applied.

SEC. 3. *And be it further enacted*, That this act shall be and remain in force until the first day of November, 1822.

SEC. 4. *And be it further enacted*, That all moneys arising from the rent of the ferries within the town of Cahawba, and of the reserved lands, adjacent to said town, which are now due, or which may become due on or before the first day of February next, and which are not otherwise appropriated, be, and the same are hereby vested in the town council of Cahawba, to be applied in defraying the expenses of building the Cahawba bridge and of completing the same.

Towncouncil to account to legislature.

SEC. 5. *And be it further enacted*, That the said town council are hereby required to account to the legislature, exhibiting how much they may have received of the above moneys, and how applied.

CHAPTER XIV.

An Act to repeal in part and amend an Act, entitled "An Act to Reduce into one the several Acts concerning Roads, Bridges, and Highways."—*Passed December* 19, 1821.

County courts to appoint overseers of roads.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That it shall be the duty of the county judge and commissioners of the roads and revenue of the several counties in this state, at the stated time of holding courts in the month of May, in each and every year, to appoint overseers of the roads, on the several precincts in said county, to serve for one year; also apportioners to apportion the hands as the law directs, which apportioners shall apportion the hands to the several precincts, and make their return as the law directs, on or before the last day of June thereafter; it shall not be lawful for the said judge and commissioners to lay off precincts, appoint overseers, or apportioners at any other time than herein specified: *Provided*, that new roads ordered to be cut out at any time of the year, and such roads as now exist, may have overseers and apportioners appointed to serve until the May court succeeding their appointment. *And provided also*, that no hands shall be appor-

Hands to be apportioned.

tioned to work on any road at the court preceding said appointment.

Overseer to contract for timber to repair roads.

SEC. 2. *And be it further enacted*, That in those places where it is necessary to purchase timber to repair or causeway roads, the overseer of such road is hereby authorized to contract for such timber as will be necessary to repair such road; and where timber cannot be had near a road where it may be wanting, the overseer may contract for hauling the same, which contract shall be laid before the county judge and commissioners of roads and revenue, who are hereby authorized and required to order payment to be made, for as much as they shall judge reasonable out of the county treasury.

Payment therefor.

Defaulters' fines, how collected.

SEC. 3. *And be it further enacted*, That fines from defaulters for failing to work on public roads, shall be recovered and collected in the following manner, to wit: the overseer shall note each defaulter, together with the number of hands such defaulter had, that failed to work on the road as warned, and shall make out an account against such defaulter for the fines incurred by law: and if the said defaulter fails to pay, or make a reasonable excuse to the overseer in ten days thereafter, the said overseer shall return the account before some justice of the peace, convenient to said precinct, which justice shall issue a summons to said defaulters, setting forth the cause of complaint, and fixing on a time not exceeding ten days, for said defaulter to appear before him, to show cause for said default; and if good cause is shown to such justice, he shall dismiss the defaulter without costs; and if said defaulter fails to appear or show good cause for said default, then the justice shall give judgment for the fine and costs, and execution shall issue as in cases of debt and assumpsit, and the officer collecting said fine shall pay the same into the county treasury: *Provided*, the excuse is deemed sufficient to dismiss the suit, the overseer shall not pay the costs.

Justice to issue summons.

Proviso.

Penalty on overseers for not prosecuting defaulters.

SEC. 4. *And be it further enacted*, That where the overseer of any road fails to prosecute defaulters as the law directs, for failing to work on a road, as warned, it shall and may be lawful for any person or persons that is appointed to work on said road, to apply to a justice of the peace near the precinct where such overseer may reside, and the said justice is hereby required to issue a summons against such overseer, requiring him to appear before said justice, and show cause why the defaulters were not prosecuted, and if such overseer fails to appear or show cause as required, the justice shall give judgment, with costs, for as much as the fines would amount to from the defaulters complained of, and the officer collecting the same shall pay it over into the county treasury.

Persons not compelled to cross Alabama to work on public roads.

SEC. 5. *And be it further enacted*, That from and after the passage of this act, no person shall be compelled to cross the Alabama river to work on any road: *Provided*, That all persons liable to work on roads, shall be apportioned to work on the nearest road, on the side of the river they may reside.

Road from Cahawba to Canton declared state road.

SEC. 6. *And be it further enacted*, That the present county road from Cahawba to Canton be, and is hereby established as the State road, until the commissioners of Dallas and Wilcox should determine otherwise.

SEC. 7. *And be it further enacted*, That no person shall be compelled to work on any road, which is more than seven miles from his place of residence.

Fines how disposed of.

SEC. 8. *And be it further enacted*, That all fines collected from defaulters shall be applied to the improvement of that part of the road, on which the said defaulters were liable to work upon.

Hands how warned to work on roads.

SEC. 9. *And be it further enacted*, That in all cases, the overseer of all and every road in this state shall have authority to appoint one fit person, in his respective precincts, to warn the hands liable to work thereon; and notice thus served shall in all cases be as binding as if served by the overseer in person, and the person appointed and performing said duties shall be exempt from working on roads.

Justices and constables' fees how obtained.

SEC. 10. *And be it further enacted*, That in all cases where delinquents may have made good and sufficient excuse, the justices and constables shall have their costs out of the fines assessed before him.

Students exempt.

SEC. 11. *And be it further enacted*, That from and after the passage of this act, all students of any academy or school within this state, be, and the same are hereby exempt from working on public roads.

Repealing clause.

SEC. 12. *And be it further enacted*, That all acts and parts of acts contrary to the provisions of this act, be, and the same are hereby repealed.

CHAPTER XV.

An Act to amend an Act, passed at Huntsville, Dec. 16, 1819, entitled "An Act to establish a Public Road therein named."—*Passed June* 16, 1821.

Road to be kept in repair.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That John Byler and associates, in addition to the work already done on the road called and known as Byler's Turnpike Road, shall make good and sufficient causeways on all the soft ground, clear the grubs at least twelve feet wide, straighten the road where necessary, and keep it in good repair from the south boundary of township eighteen, to the north boundary of township eight; all of which is to be done by the first day of November, eighteen hundred and twenty-two.

Rates of toll.

SEC. 2. *Be it further enacted by the authority aforesaid*, That John Byler and associates, from and after the passage of this act, be, and they are hereby authorized to demand and receive from each and every person travelling said road, the following rates of toll, to wit: For every four wheel carriage, one dollar; for every two wheel carriage, fifty cents; for every man and horse, twelve and one half cents; for every pack horse, twelve and one half cents; for every loose horse, six and one quarter cents; for every head of cattle, two cents; for each head of hogs or sheep, one cent; and if any person shall pass around or through the gate kept on said road for the collection of toll, with intent to evade the payment of the toll hereby allowed, he, she, or they, for every such offence, shall forfeit and pay the said John Byler and associates five dollars, over and above the amount which his, her, or their toll would have been, to be recovered before any justice of the peace, with legal costs for the same.

Commissioners to examine road.

Gate to be opened if road be not in repair.

SEC. 3. *Be it further enacted*, That Hance M. Cunningham, William Russell, and Manley Files, be, and they are hereby appointed commissioners, and authorized to examine the aforesaid road, and if the road, on the first day of November, eighteen hundred and twenty-two, be not in the good condition required by the first section of this act, then and in that case the commissioners shall direct the person keeping the gate to open the same, and suffer each and every person to pass free of toll, until the commissioners aforesaid, or a majority of them, shall certify that the road is in such order as is contemplated by the first section of this act.

Penalty for taking toll when the gate is ordered to be opened.

SEC. 4. *And be it further enacted*, That if the aforesaid John Byler and associates, or their agents, be convicted of having taken toll while the gate is directed to be kept open in conformity with the foregoing section of this act, they shall forfeit and pay the sum of twenty dollars, to be recovered by any person aggrieved, before any justice of the peace, with legal costs.

SEC. 5. *And be it further enacted*, That John Byler and associates shall have all the benefits and profits arising from the tolls of said road, for the term of twenty years forward, from and after the passage of this act.

CHAPTER XVI.

An Act to establish a Road therein named.—*Passed November 27, 1821.*

Commissioners appointed.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That Johnson M'Kenney, Jacob Sutton, James Harney, John Beetcham, and William Warren, be, and they are hereby appointed commissioners to view and mark out a road, leading from Sutton's Gap, near Moulton, to intersect Byler's road at or near the sixty-six mile tree from Tennessee river, and that they with their associates are authorized to open said road by voluntary subscription.

Commissioners to report proceedings.

SEC. 2. *And be it further enacted*, That when the above road shall be opened, it shall be the duty of the above commissioners to report their proceedings to the county courts of Lawrence and Marion counties; and that the above road shall afterward be considered a public highway, and that any person who shall fence up, fell trees, or otherwise obstruct the same, shall be subject to all fines, forfeitures, and penalties, as are made and provided for by the laws of this state.

CHAPTER XVII.

An Act to appoint Commissioners to lay out certain Roads therein specified, and for other Purposes.—*Passed December* 17, 1821.

Commissioners appointed.

Route of road.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Amos Rawlins, Thomas Coker, Thomas Roland, Jack Shackleford, and George Philips, or a majority of them, be, and they are hereby appointed commissioners to view and mark out a way for a road, to commence at some point on Tennessee river, in Morgan county, where they may best judge, to run from thence on the best, nearest, and most direct route on the east side of Cahawba river, the nature of the country will admit of, to the town of Cahawba.

Commissioners appointed.

Route of road.

SEC. 2. *And be it further enacted,* That David M'Cord, Jesse Beene, Alexander Travis, and Joseph Pickens, or a majority of them, be, and they are hereby appointed commissioners to view and mark out a way for a road, to commence at the town of Cahawba, to run from thence on the best, nearest, and most direct route, the nature of the country will admit of, to the town of Pensacola.*

Commissioners appointed.

Route of road.

SEC. 3. *And be it further enacted,* That James Magoffin, Samuel Dale, Josiah Thompson, and Jesse Thompson, or a majority of them, be, and they are hereby appointed commissioners, to view and mark out a way for a road, to commence at the town of Tuskaloosa, to run from thence on the best, nearest, and most direct route the nature of the country will admit of, by the town of Claiborne, to the towns of Pensacola and Blakeley.

Commissioners appointed.

Route of road.

SEC. 4. *And be it further enacted,* That Samuel Dale, James Magoffin, Garland Hardwick, and Benjamin Coleman, or a majority of them, be, and they are hereby appointed commissioners, to view and mark out a way for a road, to commence at the most convenient point they may judge fit, on the way that shall be marked by the commissioners appointed under the third section of this act, between the towns of Tuskaloosa and Claiborne, running from said road, the best, nearest, and most direct route, the nature of the country will admit of, to the town of Mobile.

Commissioners to take oath.

SEC. 5. *And be it further enacted,* That before the said commissioners enter on the duties herein assigned them, they shall take and subscribe to the following oath, to wit: "I ——— will truly and faithfully, to the best of my judgment and knowledge, view, mark out, and report, the best and most direct way for a road, to lead from ——— to ——— in conformity to the act under which I am commissioned. So help me God."

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* See Chapter 26 of this Title for an Amendment of the above section.

Oath to be transmitted to clerk of court.

Duty of commissioners.

Which certificate of oath shall be transmitted by the judge or justice of the peace administering the same, to the clerk of the superior court of said county for safe keeping. And it shall be the duty of said commissioners, after completing the said view, to make out a report of the same, together with such observations respecting the hills, watercourses and other obstructions on the route they shall have marked off, together with their opinion as to the expense attending on, and the best mode of clearing and opening said road; which report they shall transmit to the governor for his approval, to act on as hereinafter requested.

Vacancy how filled.

SEC. 6. *And be it further enacted,* That if any vacancy shall take place by decease or refusal to act by those herein appointed, such vacancy shall be filled by the governor.

Commissioners' duty.

SEC. 7. *And be it further enacted,* That when the commissioners, in marking off the way, run on a road now used, they shall report the same, as far as such road runs on the route they may determine to mark off, describing the situation of such road, and if on a turnpike, to report the distance it will go on said turnpike, together with the rates of tollage collected on that part.

Compensation.

SEC. 8. *And be it further enacted,* That the commissioners shall receive as compensation for their services, on making such view and report, two dollars per day.

Governor to transmit account of report to county court judge.

Judges' duty.

Who liable to work on road.

SEC. 9. *And be it further enacted,* That as soon as the report is made by the commissioners, and received and approved of by the governor, he shall transmit an account of the same to the judges of the county courts of the counties through which said road shall pass. And it shall be the duty of said judges, as soon after as possible, to lay off said road into precincts, and appoint apportioners to apportion the hands to open and clear out said road; and all persons living within five miles of the same, liable by law to work on roads, shall be apportioned to work on the said road.*

CHAPTER XVIII.

An Act to authorize William G. Parish, David Johnson, Otis Dyer, Benjamin Clements, and their associates, to erect a Toll Bridge across the Black Warrior River at the Falls near the Town of Tuskaloosa.—*Passed November 27,* 1821.

Toll bridge

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That William G. Parish, David Johnston, Otis Dyer, Benjamin Clements, and their associates, are hereby authorized to erect and build a toll bridge across the Black Warrior river, at the falls opposite the town of Tuskaloosa: the east end of the bridge shall rest in front of lot number twenty-three, in the plan of said town; and the west end to rest on a fraction of land of which they are the owners, lying opposite the said lot number twenty-three in the said town.

Property, in whom vested.

SEC. 2. *And be it further enacted,* That the property of the aforesaid bridge, when built, shall be, and the same is hereby vested in the said William G. Parish, David Johnston, Otis Dyer, Benjamin Clements, and their associates, and their heirs and assigns, for ever; and they shall and may demand and receive, on the completion of said bridge, toll according to the following rates, to wit: for each and every four wheel pleasure carriage, seventy-five cents; for each wagon and other four wheel carriage, fifty cents; for each two wheel pleasure carriage, thirty-seven and a half cents; for each cart and other two wheel carriage, twenty-five cents; for man and horse, twelve and a half cents; for each led or loose horse, six and a quarter cents; for every foot passenger, six and a quarter cents; for every head of cattle, three cents; for each head of sheep or goats, &c. two cents; for each head of hogs, one cent.

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* See Chapter 28 of this Title. See also Chapter 31 of this Title.

Rates of toll.

Liable for damages.

SEC. 3. *And be it further enacted*, That it shall be the duty of the said William G. Parish, David Johnston, Otis Dyer, Benjamin Clements, and their associates, their heirs, representatives, and assigns, to keep said bridge, when completed, in good order and repair, as long as they may think proper to continue the same, and receive toll; they and each of them may, their heirs, representatives, and assigns, shall be deemed and held liable for all injuries which may be sustained by any person or persons passing or repassing said bridge: *Provided*, said injury results rom the negligence or want of proper attention to the good order and repairs of said bridge.

County court may appoint commissioners to inspect bridge.

SEC. 4. *And be it further enacted*, That the county court in and for the county of Tuskaloosa, or such other tribunal as may be hereafter established, shall be, and they are hereby authorized, whenever it may, in the opinion of the judge or judges thereof be deemed necessary, to appoint suitable commissioners to inspect the situation of said bridge, and if a majority of said commissioners shall report that said bridge is not in good order and repair, and fit for passengers, the court shall have power to suspend the collection of toll until said bridge shall be put in good repair.

Liable for damages sustained by the obstruction of navigation of the river.

SEC. 5. *And be it further enacted*, That the said William G. Parish, David Johnston, Otis Dyer, Benjamin Clements, and their associates, their heirs, representatives, and assigns, shall be bound and liable to be sued for all damages arising from any obstruction of the navigation of said river by the erection of the aforesaid bridge.

Penalty for taking more than lawful toll.

SEC. 6. *And be it further enacted*, That if the said William G. Parish, David Johnston, Otis Dyer, Benjamin Clements, and their associates, their heirs, representatives, or assigns, shall exact or demand any greater rates or prices for the passage over said bridge than is herein before prescribed, he, she, or they so offending, shall, on conviction, forfeit and pay the sum of ten dollars, for the use of the persons who will sue for the same; to be recovered before any justice of the peace for the county of Tuskaloosa, together with such costs as are allowed in other cases tried before them.

How recovered.

Bridge not to obstruct navigation.

SEC. 7. *And be it further enacted*, That the said bridge shall be so constructed as in no wise to impede the free passage and navigation of the Black Warrior for all kinds of vessels, or water crafts, under the penalty of having the same removed as a nuisance, by order of any court having competent jurisdiction thereof. Penalty.

CHAPTER XIX.

An Act authorizing the Intendant and Council of the lower part of Tuskaloosa to erect a Toll Bridge across the Black Warrior River.—*Passed November 27, 1821.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Charles Lewin, intendant, Gilbert Saltonstall, Benjamin Cox, Amos Warner, and William M. Marr, council, in and for the lower town of Tuskaloosa, and their successors in office, are hereby authorized to erect a toll bridge across the Black Warrior river, opposite the main street running through the said town, upon the same terms, and under the same restrictions, and subject to the same forfeitures and penalties imposed on the Bridge Company of Upper Tuskaloosa; and they are hereby authorized to demand and receive the same tolls and rates that are allowed by law to the Bridge Company in and for the town of Upper Tuskaloosa. Authorized to erect a toll bridge. Conditions. Rates of toll.

SEC. 2. *And be it further enacted,* That this act shall commence and be in force from and after the passage thereof. Commencement.

CHAPTER XX.

An Act to appoint Commissioners to lay out a certain Road therein named.—*Passed November 27, 1821.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Benjamin Harris, Samuel Bell, William Russell, Jun. Claiborne Williams, and Jesse Van Hoose, be, and they are hereby appointed commissioners, who, or a majority of them, are hereby authorized to lay out and mark a road, leading from Russelville, in Franklin county, to the Baptist meeting-house; and from thence the nearest and best way to intersect Byler's road, at or near the place called the Good Spring, in Marion county. Commissioners appointed. Route of road.

SEC. 2. *And be it further enacted,* That said commissioners, or a majority of them, are hereby empowered and required to meet at Russelville, on the first Monday in February next, or any succeeding day that may then be appointed by one or more of said commissioners: which appointed meeting shall be advertised, so as to give notice to all concerned, that they may attend said meeting. And the said commissioners shall then and there proceed to view and mark out said road, and when finished, they shall report the same to the next county court which may be held thereafter in Franklin county: and the court shall appoint overseers for the road, who shall perform all the duties of overseers belonging to other roads. And all persons liable to work on roads, living within one mile on either side Commissioners when to meet. To mark out road, and report to county court. Court to appoint overseers. Who to open road.

thereof, shall be bound to assist in opening said road, and keeping the same in repair, as far as the county line between Franklin and Marion counties.

CHAPTER XXI.

An Act to authorize John Rose to cut out and open a Road from the Town of Cahawba to Pine Barren Creek, and receive Toll for keeping it in repair.—*Passed November* 27, 1821.

Route of road.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That John Rose of Dallas county, be, and he is hereby authorized and empowered to cut out and open a road, commencing at the town of Cahawba, passing by the house of, and across the bridge lately erected over Cedar creek by, the said John Rose; thence to Pine Barren creek, on the most direct route leading to Burnt Corn spring.

Damages to be paid.

SEC. 2. *And be it further enacted,* That if any individual through whose lands such road shall run, believes his property will be damaged thereby, and objects to the opening said road, then and in that case the said John Rose shall apply to the county court of the county in which the person so objecting may own lands; and it shall be the duty of such county court to issue a writ or writs of *ad quod damnum,* as the case may be, and such proceedings shall be had thereon as the law directs in such cases; and all damages so assessed, shall be defrayed and paid by the said John Rose.

County court to appoint commissioners to view road when opened.

Rates of toll.

Penalty for evading payment of toll.

To receive profits for twelve years.

SEC. 3. *And be it further enacted,* That the said John Rose, on completing the said road, shall notify the county court of Dallas thereof, whose duty it shall be, and it is hereby empowered and required to appoint five commissioners, a majority of whom may view and examine the said road and bridge; and if in their opinion the same shall be in good order and repair, then the said John Rose shall be permitted to receive the following rates of toll, to wit: on a four wheel carriage and team, seventy-five cents; on a two wheel carriage, thirty-seven and a half cents; on a man and horse, twelve and a half cents; on each pack-horse, six and a quarter cents; on each loose horse, four cents; on each head of cattle, two cents; on each head of hogs, or sheep, one cent; that shall pass the same. And the said John Rose is hereby authorized to erect a turnpike gate on some convenient place on said road; and if any person shall break through or round said gate, with intent to evade the payment as is required by this act, they shall forfeit and pay for every such offence, treble the amount by them due to the said John Rose, to be recovered with costs, by action of debt, before any judge or justice of the peace. And the said John Rose shall continue to keep the said road and bridge over Cedar creek in good order and repair; and to receive all the profits arising therefrom for the term of twelve years. And at the expiration of said time, the said road shall be held subject to the disposition of the legislature of this state.

SEC. 4. *And be it further enacted*, That the county court of Dallas shall, on the third Monday of January in each and every year, or as soon thereafter as the court may set, appoint five commissioners to view and examine the said road and bridge; and if in their opinion the same be not in good order and repair, as is required by this act, then and in that case the said commissioners shall direct the persons keeping the gate, to open the same, and suffer each and every person to pass free of toll until the commissioners aforesaid, or a majority of them, shall certify that the said road and bridge are in such order and repair as is contemplated by the provisions of this act: and if the said John Rose, or his agents, be convicted of having taken toll while the gate is directed to be kept open, in conformity to this act, they shall forfeit and pay the sum of twenty dollars, to be recovered by any person aggrieved, before any justice of the peace, with legal costs.

County court to appoint commissioners to road annually.

CHAPTER XXII.

An Act to authorize a Lottery, for the purpose of Building a Bridge over Prairie Creek in the County of Greene.—*Passed December 12, 1821.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That it shall and may be lawful for Allen Glover, George S. Gaines, Nathan Bolles, Shelby Cursine, Charles Lafevre, Thomas H. Herndon, John Robinson, William Murphy, ——— Seymore, ——— Lake, William Winn, and ——— Ravesie, or a majority of them, to raise by lottery, in one or more classes as to them may seem most convenient and necessary, any sum of money not exceeding three thousand five hundred dollars, to be appropriated in building and completing a bridge over Big-Prairie creek in the county of Greene, at the most eligible place within two miles of the mouth of said creek.

Managers appointed.

Sum to be raised.

And the said Allen Glover, George S. Gaines, Nathan Bolles, Shelby Cursine, Charles Lafevre, Thomas H. Herndon, John Robinson, William Murphy, —— Seymore, —— Lake, William Winn, and —— Ravesie, or such of them as may think proper to act, shall, before they enter on the duties of their office, enter into bond with sufficient security in the penal sum of ten thousand dollars, payable to the governor or his successors in office, before some one of the judges of the circuit court of this state, conditioned for the faithful discharge of the duties imposed by this act: which bond may from time to time be put in suit, in the name of the state, by any person or persons injured by a breach thereof.

Managers to enter into bond.

And it shall be the duty of said managers, within ninety days from the completion of the drawing of said lottery, to pay to the fortunate person or persons, or to his or their order, all such prizes as may be due, agreeably to the scheme which they may have determined on, and published. And the said lottery shall be drawn in the town of Erie, or Demopolis, or at such

To pay prizes.

Lottery, when and where to be drawn. other place as the managers may deem expedient; giving due notice of the time and place of said drawing.

Oath to be taken. And each of said managers, and each clerk that may be employed, shall, before the drawing commences, take an oath to act fairly and impartially in the discharge of their respective duties; which oath may be administered by any justice of the peace residing in the county where the drawing may be held.

If the said lottery or any class thereof be not drawn within two years after the scheme of the same may have been published, the same shall cease, and said managers shall refund on demand, the price of the tickets to the holders of the same.

Managers to contract for building bridge. SEC. 2. *And be it further enacted*, That the aforesaid managers are hereby required and authorized to contract for the building and completing the said bridge, within the limits designated by this act.

And the managers are hereby authorized to make to the undertaker or undertakers such disbursements and at such times as they may think proper.

CHAPTER XXIII.

An Act more effectually to enforce the Acts of the General Assembly of the 21st December, 1820, and of June the 14th, in relation to Roads in this State.—*Passed December* 15, 1821.

Preamble. *Whereas*, the first recited act authorizes the several county courts in this state, through the counties whereof large creeks or watercourses obstruct the roads, over which it may be too burthensome to the citizens of such counties to construct bridges or crossways by means of a county tax, in which cases it is by the said act made lawful for such county courts to contract with any person or persons to build toll bridges or crossways, and to make and allow toll to such person or persons, &c.

And whereas, by the last recited act, this authority is delegated to the present county judges associated with the commissioners of roads and revenue, without delegating any authority by either of said acts to the said county courts, or to the said judges and commissioners, to impose fines or inflict penalties, against any person or persons who may obstruct or demolish the said bridges or causeways, or who may improperly evade the toll authorized to be received for passing such bridges or crossways; Therefore,

Penalty for obstructing or injuring toll bridge or crossway. SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That if any person or persons shall obstruct or demolish any such bridges or crossways, or shall pass round or through the gate or gates authorized to be set up by the said county courts, respectively, with intent to evade the payment of toll, he, she, or they, shall for every such offence forfeit and pay to the person or persons having contracted with the said courts respectively, for such bridge or crossway, thrice the amount of the common toll authorized to be received by such person or persons, to be recovered before any justice of the peace having jurisdiction of the same, with costs of suit.

CHAPTER XXIV.

An Act supplementary to the several Acts in relation to Highways, Bridges, and Ferries.—*Passed December* 12, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act the county courts of the several counties in this state, in addition to the powers already given to, and vested in them, by the several acts in relation to highways, bridges, and ferries, be, and they are hereby authorized to impose and inflict penalties, not exceeding twenty dollars for each and every offence, on any person or persons who may violate or contravene the privilege granted by their said courts, respectively, to any person or persons to keep a public ferry or ferries, to be recovered before a justice of the peace, or any court having competent jurisdiction of the same: which penalty shall inure to the use of the person or persons suing for the same: *Provided always,* that nothing in this act contained, shall be so construed, as to exclude any person or persons from the right of carrying themselves, or other persons, or any thing belonging to them, in their own boats, free of ferriage: *Provided,* that this act shall only extend to the counties of Mobile and Baldwin: *And provided also,* that if any delay be created by the ferryman aforesaid, no penalty shall be recovered from any person whatsoever, by crossing said ferry.

Court may inflict penalties.

How recovered.

Proviso.

Act extended only to Mobile and Baldwin.

CHAPTER XXV.

An Act declaring the Conecuh and Sepulgah Rivers Public Highways, and for other purposes.—*Passed December* 13, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, the Conecuh river from the falls thereof in Henry county to the Florida line, and the Sepulgah from its falls near the mouth of Bottle Creek, to its junction with Conecuh river, be, and the same are hereby declared to be public highways.

SEC. 2. *And be it further enacted,* That Henry Gunnison, Thomas L. Hallett, Thomas Richardson, Elias Pledger, and their associates, are hereby constituted and appointed a body corporate by the name and style of The Navigation Steam Boat Company: and they are hereby vested with all the rights and privileges, and subject to the same restrictions which are granted and imposed in an act to incorporate the Mobile Steam Boat Company, passed the twenty-seventh November, one thousand eight hundred and twenty-one.

Steam-boat company incorporated.

Their powers and restrictions.

CHAPTER XXVI.

An Act to establish a Public Road therein mentioned, and for other purposes.—*Passed December 7, 1821.*

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the road which is about to be opened from Buttsville in the county of Butler, to the shoals of Conecuh river, be, and the same is hereby declared to be a public road.

Road from Buttsville to shoals of Conecuh declared public.

Ferry on Conecuh authorized.

Sec. 2. *And be it further enacted,* That Thomas M'Daniel, of the county of Butler, is hereby authorized to establish a ferry on the Conecuh river, where the said road shall strike the same, or at such place near the falls on said river as he may deem most suitable, and may receive the following rates of ferriage, to wit: For every wagon or four wheel carriage, one dollar; for every two wheel carriage, fifty cents; for every man and horse, twelve and a half cents; for every loose horse, six and a fourth cents; for every head of cattle, four cents; for each head of hogs or sheep, two cents; for every foot passenger, six and a fourth cents; *Provided, however,* That the said Thomas M'Daniel shall not enjoy the privileges arising under this act, longer than the lands adjacent to such ferry shall continue the property of the government of the United States.

Rates of ferriage.

Proviso.

Road to be cut out.

Sec. 3. *And be it further enacted,* That the said Thomas M'Daniel shall lay off, and cut out a road from the ferry contemplated in this act, to the Federal road leading from Fort Crawford to Fort Gaines; and the said road, so soon as the same is cleared out, is hereby declared to be a public road.

CHAPTER XXVII.

An Act to authorize Peter Ross to establish a Toll Bridge across the Big Mulberry Creek, between the counties of Dallas and Autauga.—*Passed December 15, 1821.*

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Peter Ross be, and he is hereby authorized to claim and receive of and from each and every person who shall cross on said bridge, the following toll, to wit: For every four wheel carriage, seventy-five cents; for every two wheel carriage, thirty-seven and a half cents; for every man and horse, twelve and a half cents; for every pack horse, six and a quarter cents; for every loose horse, six and a quarter cents; for each head of cattle, two cents; for each head of hogs, sheep, or goats, one cent.

Rates of toll.

Penalty for stopping road.

Sec. 2. *And be it further enacted,* That the said Peter Ross shall not stop up any ford on said creek, in order to turn travellers across his bridge, under the penalty of twenty dollars, to be recovered before any justice of the peace, with costs of suit.

CHAPTER XXVIII.

An Act authorizing a Lottery for the making of a Turnpike Road, leading from the City of Mobile to Chickasaw Bogue Creek, in the County of Mobile, and for other purposes.—*Passed December 3, 1821.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That it may be lawful for the mayor and aldermen of the city of Mobile, for the time being, and their successors in office, or a majority of them, to raise by lottery, in one or more classes, as to them may seem most convenient and necessary, any sum not exceeding ten thousand dollars, to be appropriated in improving the road leading from the city of Mobile to Chickasaw Bogue creek, in the county of Mobile: and the mayor and aldermen of the city aforesaid, for the time being, and their successors in office, shall, before they enter on the duties of their office, enter into a bond in their corporate capacity, in the penal sum of twenty thousand dollars, payable to the governor and his successors in office, conditioned for the faithful discharge of the several duties imposed upon them by this act; which bond may, from time to time, be put in suit in the name of the governor of said state and his successors, by any person injured by a breach thereof: and it shall be the duty of the said corporation, within ninety days from the completion of the drawing of said lottery, to pay to the fortunate person or persons, or his or their order, all such prizes as may be drawn, agreeably to the scheme which they may have determined upon, and published by them. The said lottery shall be drawn in Mobile, or at such other place as may be most expedient, giving due notice of the time and place of such drawing. Each of the said managers, and each clerk that may be employed, shall, before the drawing commences, take an oath to act fairly and impartially in the discharge of his several duties; which oath may be administered by any justice of the peace. If the said lottery, or any class thereof, be not drawn within the year after the scheme of the same may have been published, the same shall cease, and said corporation shall refund, on demand, the price of the ticket to the holder of the same.

Lottery authorized.

Managers to enter into bond.

Bond may be put in suit.

Pay prizes.

Place of drawing lottery.

Managers and clerks to take oath.

If not drawn within one year, to expire. Corporation to refund moneys.

SEC. 2. *And be it further enacted*, That the aforesaid corporation are hereby required and authorized to contract for the improvement of the aforesaid road, on such plan as they deem most convenient and proper, out of the funds that may be raised by the lottery.

Corporation to contract for improvement of road.

SEC. 3. *And be it further enacted*, That it shall be the duty of the mayor and aldermen of the city of Mobile, for the time being, so soon as their term of office may expire, to deliver over and transfer to their successors all moneys by them received, and collected on account of such lottery, together with a particular statement of the number of tickets sold, the moneys received on account of the same, and all books and papers touching or relating to the said lottery.

Transfer papers to successors.

Lottery authorized for Russelville Lodge, No. 7.

SEC. 4. *And be it further enacted*, That it shall and may be lawful for James Davis, Peter Martin, John S. Fulton, Anthony White, Robert Gillaspie, James Frazur, and George Higgason, or a majority of them, to raise by lottery any sum not exceeding three thousand dollars, to be appropriated in erecting and furnishing a masonic hall, for the use and benefit of Russelville Lodge, No. 7, of Ancient Free Masons, in the town of Russelville.

Managers to enter into bond.

SEC. 5. *And be it further enacted*, That the aforesaid James Davis, Peter Martin, John S. Fulton, Anthony White, Robert Gillaspie, James Frazur, and George Higgason, or as many of them as may choose to serve, shall, before they enter upon the duties assigned them in this act, enter into bond, with sufficient security, before the judge of the county court of Franklin, conditioned for the faithful discharge thereof; which bond may be put in suit in the name of the governor of the state of Alabama for the time being, by any person injured by a breach of any of the provisions of this act.

To pay prizes.

SEC. 6. *And be it further enacted*, That it shall be the duty of the aforesaid persons, or as many of them as may choose to act, within ninety days from the completion of the drawing of said lottery, to pay to the fortunate drawers in said lottery, or to their heirs or assigns, such prizes as may be due, agreeably to the scheme they may have determined on, and published.

Place of drawing lottery.

SEC. 7. *And be it further enacted*, That the drawing of said lottery may be in the town of Russelville, or at any other place that may be agreed upon by the managers aforesaid, giving due notice of the time and place of such drawing, which shall be conducted in such manner, and under such regulations and responsibilities, as to the aforesaid persons may seem most expedient: *Provided*, That each clerk, or other person concerned in the drawing, shall take an oath before any justice of the peace, faithfully to discharge their respective duties.

Proceedings in case lottery is not drawn.

SEC. 8. *And be it further enacted*, That if the said lottery be not drawn within one year after the scheme of the same shall have been published, the same shall cease, and the purchasers of tickets may demand and recover of the managers, or persons before named in the fourth and fifth sections of this act, any money disbursed for tickets in said lottery.

Managers to report progress.

SEC. 9. *And be it further enacted*, That the managers aforesaid shall report to said lodge, within six months after the passage of this act, and at such times thereafter as may be ordered by said lodge, the progress made in the sale of tickets, or the drawing of said lottery.

Managers to pay moneys to order of Lodge.

SEC. 10. *And be it further enacted*, That the said managers shall pay over all and any moneys which may be raised under this act, to the order of said lodge, or to such person or persons as may be authorized to receive the same, by said lodge, for the purpose of erecting and furnishing a masonic hall.

Lodge may accept of lot to erect building on.

SEC. 11. *And be it further enacted*, That the master of said lodge be, and he is hereby authorized, by and with the consent of the officers and members of said lodge, to acquire by said purchase, or accept as a donation, an elegible lot or parcel of ground, not exceeding one acre, within the town of Russelville, on which to erect said masonic hall, and the title to or in said lot or parcel of land, with all and singular its appurtenances so obtained as aforesaid, shall vest, and is hereby vested in said master, officers, and members of said lodge, and their successors in office, to the sole use, benefit, and behoof of said lodge.

Title vested in Lodge.

SEC. 12. *And be it further enacted*, That the worshipful master and officers of every lodge of ancient freemasons in the state of Alabama, shall have the privilege of raising by lottery the sum of three thousand dollars, for the use and benefit of their lodges respectively, as prescribed by the provisions of this act, for the benefit of the Russelville lodge, number seven, of ancient freemasons.

Privileges of raising money by lottery extended to all lodges in the state.

NOTE—Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12, relate to Lotteries for the benefit of Freemasons, &c.

CHAPTER XXIX.

An Act to establish a Ferry, and appoint Commissioners to lay out a Road therein named.—*Passed December* 12, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That a ferry be, and the same is hereby established over the Alabama river, at a place called the Big Bend, opposite the town of Montgomery; and that the same be established in the proprietors of the town of Montgomery, and that they be allowed to ask, demand, and receive the same rates of ferriage as are allowed by law at the nearest ferry on the said river.

Ferry established.

Rates of ferriage.

SEC. 2. *And be it further enacted*, That Robert Glen, Clement Freeny, William Ashley, Bolling Hall, and Francis Lewis, be appointed to mark out a road beginning at the aforesaid ferry, opposite to the town of Montgomery, and to run out to the north corner, between sections thirty-three and thirty-four; and from thence along the line dividing sections twenty-seven and twenty-eight, in township seventeen and range seventeen, unto the north corner of said sections; and from said corner to continue on in such direction as said commissioners may think proper, to intersect the road leading from Bolling Hall's to Pine Flat, in Autauga county.

Course of road.

SEC. 3. *And be it further enacted*, That as soon as said commissioners shall have marked out said road, they shall report the same to the county court of Autauga county, whose duty it shall be to appoint overseers for said road, and to have hands apportioned to open and keep in repair said road. And if the said commissioners at the time they mark and lay out the said road, should assess any damage to the owners of land where the said road may run, the citizens of Montgomery and Autauga counties petitioning for said road, shall pay all such damages.

Commissioners to report to county court.

To assess damages.

Petitioners to pay damages.

SEC. 4. *And be it further enacted*, That the petition praying for the road herein established, shall be deposited in the clerk's

Petition to be filed in clerk's office.

office of Autauga county, and that a copy thereof shall be filed in the clerk's office in Montgomery county.

CHAPTER XXX.

An Act authorizing Edwin Lewis to open and construct a Road, in Mobile County, and for other purposes.—*Passed December* 18, 1821.

Route of road.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Edwin Lewis be, and he is hereby authorized to open and construct a road (with all necessary bridges and causeways on the same,) leading from the place of Hugh H. Ralston in Mobile county, across Three Mile creek, at the saw-mill of the said Lewis; and thence in the most direct and practicable route, to intersect the road from Mobile to Winchester, at or near Mrs. Harrold's place, being a distance of eight miles.

Rates of toll.

Sec. 2. *And be it further enacted,* That the said Lewis shall be entitled to receive, as compensation for making and keeping said road in good repair, fifty cents for every four wheel carriage, for passing the whole length of the same; for every two wheel carriage, twenty-five cents; and for every horse and rider, twelve and a half cents.

Right vested.

Proviso.

Rates of toll to be kept posted up.

Commissioners to report road in good order.

Sec. 3. *And be it further enacted,* That the said Edwin Lewis, his heirs or legal representatives, shall be, and they are hereby vested with the exclusive right and authority to demand and receive the above rates of toll, for the term of twelve years: *Provided,* said road be completed within six months from the passage of this act: *And provided also,* That only one gate shall be erected on said road, and that the rates of toll be constantly kept posted up thereat in view of the traveller: *Provided also,* That before toll shall be exacted as aforesaid, a majority of the road commissioners of Mobile county, shall examine and declare said road in good order.

Gate may be thrown open.

Sec. 4. *And be it further enacted,* That the county court of Mobile county, shall have power at any time to throw open by order the aforesaid gate, if on report of the road commissioners, the road as aforesaid should at any time be deemed out of order.

CHAPTER XXXI.

An Act appointing Commissioners to lay out a certain Road therein designated.—*Passed December* 3, 1821.

Commissioners appointed.

Route of road.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Samuel Mardis, Edward Sims, Jonathan Music, Hansel M'Kenny, Thomas Williams, and James Drennin, be, and they are hereby appointed commissioners, who, or a majority of whom, are hereby authorized to lay out and mark the nearest and best way for a road to be opened, beginning at such point as they may deem proper on the road leading from Huntsville to Tuskaloosa; and running from thence to, or near Fort Williams on the Coosa river, in such manner as to shorten the distance to the settlements in Georgia: *Provided nevertheless*, That the said commissioners shall not be entitled to receive compensation for their services from the state of Alabama.

Proviso.

CHAPTER XXXII.

Resolution in relation to the Road from Uchee Bridge to Line creek.—*Passed December* 17, 1821.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That our senators in the congress of the United States be instructed, and our representatives requested, to use their influence to procure to Thomas Barton and Chapel Sledge, the right of establishing a road in the Creek Nation of Indians, leading from the Uchee bridge to the United States boundary line on Line creek.

And be it further resolved, That his excellency the governor be requested to forward to each of our senators and representatives a copy of these resolutions.

CHAPTER XXXIII.

An Act to empower the County Court of Tuskaloosa to appoint a Jury to view a Public Road leading from the south end of Market-street, in the Town of Tuskaloosa.—*Passed January* 1, 1823.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That upon petition, the county court of Tuskaloosa shall have power to appoint a jury to view a road which has been established from the south end of Market-street, in the town of Tuskaloosa; and the said jury shall have power to view said road the distance of three miles, commencing at Market-street; and if the jury be of opinion that said road can be run on other ground without inconvenience to the public, and of less injury to the lands of individuals, they shall report the same to the court, subject to the rules and regulations of the laws now force relating to public roads.

CHAPTER XXXIV.

An Act to amend an Act, entitled "An Act to appoint Commissioners to lay out certain Roads therein specified, and for other purposes."—*Passed December* 12, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That John Bell, Thomas Armstrong, William Trigg, and Bradley Dear, be, and they are hereby appointed additional commissioners to view and mark out a way for a road, to commence at the town of Cahawba; to run from thence on the best, nearest, and most direct route the nature of the country will allow, to the town of Pensacola.

CHAPTER XXXV.

An Act to mark out and establish a Road leading from the City of Mobile, in the County of Mobile, to Edwin Lewis's Turnpike Road, in said County.—*Passed December 9, 1822.*

Commissioners appointed.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Nicholas Pope, Joseph W. Moore, Edward Hall, John W. Ward and Hugh H. Ralston, be, and they are hereby appointed commissioners, or any three of them, to view and mark out a road of the width of one hundred feet, commencing at the west end of Dauphin-street, in the city and county of Mobile, and running from thence, in as straight a course as the ground will permit, to the commencement of a road, known by the name of Edwin Lewis's turnpike road; and they, or any three of them, are authorized to appoint an overseer of said road, who shall serve for one year, under the penalty of fifty dollars: and that they, or any three of them, are authorized to apportion the hands who are liable by law to work on roads, to work on said road.

Commissioners appoint overseers.

May apportion hands.

Commissioners to report to county court.

SEC. 2. *And be it further enacted,* That when the above road shall be marked out or opened, it shall be the duty of the said commissioners, or any three of them, to report their proceedings to the county court of Mobile county; and that the above road shall afterward be considered a public highway; and that any person who shall fence up, fell trees, or otherwise obstruct the same, shall be subject to all such fines, forfeitures, and penalties, as are made and provided for by the laws of this state.

Overseer to warn hands.

SEC. 3. *And be it further enacted,* That the said overseer shall warn and call out all persons so apportioned, as is provided by the laws of this state.

Forfeiture.

SEC. 4. *And be it further enacted,* That if any person, after being duly warned as aforesaid, shall neglect or refuse to appear and work, he shall forfeit and pay to the overseer of said road to which he is apportioned, the sum of one dollar for every day he shall so refuse or neglect to labour; to be recovered in an action of debt, before any justice of the peace of the said county, with costs of suit, and the money, when recovered, shall be applied to the repair of said road.

CHAPTER XXXVI.

Extract from an Act passed January 1st, 1823, entitled "An Act to make Appropriations for certain Claims against the State."

SEC. 31. *And be it further enacted,* That the sum of eight hundred dollars be, and the same is hereby appropriated, towards the payment of the commissioners appointed under the act of the 17th December, eighteen hundred and twenty-one, if so much should be necessary, to be paid out of any money in the treasury, not otherwise appropriated: *Provided*, That the same shall be reimbursed out of the three per cent. fund, when so much thereof shall be received.

CHAPTER XXXVII.

An Act to appoint Commissioners to lay out a Road therein specified.—*Passed December* 27, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That James W. Armstrong, John Rives, and John Armstrong, or a majority of them, be, and they are hereby appointed commissioners to mark out a way for a road, to commence at the town of Montgomery, in the county of Montgomery, to run from thence to the falls of the Conecuh river, in the best, nearest, and most direct route the nature of the country will admit. Commissioners appointed. Where to commence.

SEC. 2. *And be it further enacted*, That before the said commissioners enter upon the discharge of the duties herein assigned them, they shall take and subscribe to the following oath, to wit: "I, ———, do solemnly swear, that I will truly and faithfully, to the best of my judgment, view, mark out, and report the best and most direct way for a road, to lead from the town of Montgomery, in the county of Montgomery, to the falls of the Conecuh river. So help me God." Which oath shall be certified and forwarded by the judge or the justice of the peace taking the same, to the clerk of the circuit court of the county in which the said oath may be taken; and it shall be the duty of said commissioners to make out a report, after completing the said view, and forward the same to the governor for his approval, with observations respecting the watercourses and other obstructions to be encountered in opening the same. Commissioners' oath. Make report.

SEC. 3. *And be it further enacted*, That the said commissioners shall receive, as compensation for their services in viewing and reporting as aforesaid, two dollars per day, each. Compensation.

SEC. 4. *And be it further enacted*, That if any vacancy shall occur, by death or refusal of any one or more of said commissioners, it shall be the duty of the governor to fill such vacancies: *Provided*, That the aforesaid commissioners shall receive from the state no compensation for their services. Vacancies how filled. Proviso.

CHAPTER XXXVIII.

An Act relative to Turnpike Roads.—*Passed December* 31, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the commissioners of the several turnpike roads in this state, shall not report any turnpike road in order, until the proprietors of said road or roads shall have complied with the provisions of the acts authorizing said turnpike road or roads.

CHAPTER XXXIX.

An Act to amend the Act passed the 17th December, 1821, entitled "An Act to appoint Commissioners to lay out certain Roads therein specified, and for other purposes."—*Passed December* 31, 1822.

Certain road discontinued.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, so much of the road laid out by the commissioners appointed by an act, entitled An Act to appoint Commissioners to lay out certain Roads therein specified, and for other purposes, passed December seventeenth, eighteen hundred and twenty-one; from the town of Tuskaloosa to Claiborne, Pensacola, and Blakeley, commencing at or near John Talbird's in Monroe county, to the field of Josiah Thompson in said county, be, and the same is hereby discontinued.

Route of road.

SEC. 2. *And be it further enacted*, That the route of said road, so discontinued, shall be changed, and run as follows, to wit: leaving the same at or near John Talbird's, and thence running a direct line, as nearly as may be, to the house of Josiah Thompson: thence along the St. Stephens road, as it formerly run, to the upper end of a field of the said Josiah Thompson, where the road hereby authorized and required to be laid out, re-enters the route of the said road reported by the commissioners mentioned in the foregoing section.

CHAPTER XL.

An Act authorizing Elisha Thomas, Davis Gurley, and their Associates, to Turnpike a Road therein designated.—*Passed December* 30, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That Elisha Thomas, Davis Gurley, and their associates, be, and they are hereby authorized to turnpike a road twenty feet wide, commencing near the point at which the military road strikes the mountain in Franklin county, thence the nearest and best way to the Buttahatche river, crossing that stream at the most suitable point within the southwest quarter of section fourteen, township eleven, range fourteen, west of Huntsville; thence the nearest and best way to the state line in a direction to Columbus, on the Tombeckbee river; due regard being always had to goodness of ground, the accommodation of travellers, and the constant and certain passage of the grand southern mail.

Route of road.

Road divided into two divisions.

SEC. 2. *And be it further enacted*, That the said Elisha Thomas, Davis Gurley, and their associates, are hereby allowed to make two divisions of said road; the first of which shall commence with the road, and terminate at, or near William H. Ragsdale's in the county of Marion, say thirty-one miles; the second division shall commence at the point last mentioned, and terminate at the state line in the county of Pickens, making eighty miles: and the said Thomas and Gurley, and their associates, are authorized to erect two gates on said road, the one at Big-bear creek, in the county of Franklin, and the other at Beaver creek, in Marion county, and they are allowed to receive the same tolls at each gate.

Two gates may be erected.

Commissioners.

Sec. 3. *And be it further enacted*, That Anthony Winston, Francis Bullock, and Claiborne Williams, be, and they are hereby appointed commissioners for the county of Franklin, and George White, and Francis Shoemake are hereby appointed commissioners for the counties of Marion and Pickens; whose duty it shall be carefully to examine said road from end to end, within their respective appointments, three times within each and every year, provided such commissioners shall deem such review necessary, and report the actual condition of the road to their respective county courts; which courts shall have power to fill all vacancies which may occur in this commission; and the person or persons so appointed shall be competent to perform all the duties by this act intended or required.

Their duty.

Vacancies how filled.

Width of road to be cleared of grubs, &c.

Sec. 4. *And be it further enacted*, That the road contemplated by this act, shall be eighteen feet wide, cleared of every obstruction, twelve feet of which, in the straight general direction of the road, shall be cleared of stumps and grubs, either taken up by the roots or levelled with the ground: the sloping ground and banks of watercourses shall be so worked on as to ensure the safe and easy passage of horsemen, and carriages of every description; all marshes, swamps, and creeks, when necessary, shall be crosswayed or bridged with good and durable timbers, put together in a substantial and workmanlike manner, with ditches on each side of crossways whenever necessary: the crossways on highland marshes shall be twelve feet wide, and those on swamps and the bridges over creeks, shall be fourteen feet wide.

Commissioners may be called to review and report condition of first division of road.

Sec. 5. *And be it further enacted*, That when the said Thomas and Gurley, and their associates, shall have completed the first division in said road, they are authorized to call on the commissioners of Franklin county, who shall attend and review said division, and report its condition to the court: if the report shall recommend the erection of a gate, the judge of said court shall cause an order to be entered of record, permitting a gate to be set up at Big-bear creek; and the said clerk shall deliver to the said Thomas and Gurley, and their associates, an official certified copy thereof, which shall be a general authority for the said persons and their associates to receive the following tolls: for each wagon and team, seventy-five cents; for each four wheel pleasure carriage, seventy-five cents; for each two wheel pleasure carriage, fifty cents; for each carry-all or dearborne, thirty-seven and a half cents; for each cart, twenty-five cents; for man and horse, twelve and a half cents; for each led or loose horse, six and one-fourth cents; for each head of cattle, four cents; for each head of sheep, goats, and hogs, two cents: *Provided*, that nothing in this act contained, shall au-

Rates of toll.

Proviso.

Certain persons exempted from paying toll.

thorize the said company, to receive toll from the carriers of the United States' mails, or from persons bearing expresses to or from the troops or officers of the United States; neither shall tolls be received from the officers, troops, or expresses of any of the other states in times of war: *And provided*, all persons travelling said road on foot, shall at all times pass said road and turnpike free of toll.

Commissioners to receive and report the second division of road.

Toll gate may be erected.

SEC. 6. *And be it further enacted*, That when the said Thomas and Gurley, and their associates, shall have completed the second division of said road, they are hereby authorized to call on the commissioners for Marion county, who shall forthwith proceed to review said division; and if found in the condition required by this act, they shall so report to the judge of the county court for said county, who shall cause an order to be entered of record, authorizing the said persons to put up a toll gate at Beaver creek, in the county of Marion, and the clerk of said court shall furnish the said persons with an official copy thereof, which order shall authorize the said Thomas and Gurley, and their associates, to receive the same tolls at this gate as that at Big-bear creek; and the said persons shall pay to the commissioners on each review, three dollars per day.

Right to continue fifteen years.

SEC. 7. *And be it further enacted*, That the said proprietors shall have the exclusive privilege of keeping up the said turnpike road, with the tolls, and under the particular conditions as set forth in this act, for the term of fifteen years, commencing on the first day of January next.

Military road may be part of this road.

Commissioners appointed to mark route of road.

To report to county court.

To take oath.

SEC. 8. *And be it further enacted*, That whenever it shall become necessary for the road designated in this act, to touch the military road, it shall become a part of the road contemplated in this act, and in every instance the goodness of ground, and the most convenient and cheapest accommodations for travellers, and the safe, easy, and constant passage of the United States' grand southern mail, shall govern the passage and direction of this road; safely to perfect this object, Andrew Mattox, Hiram Roberson, and William Simpson, a majority of whom shall form a board, be, and they are hereby appointed commissioners, whose duty it shall be, carefully to examine the ground upon which the road shall pass, (governed always by the precise principles as laid down in the preceding part of this section,) mark and report the same from end to end, to the county court of Marion, there to be entered of record; which road so reviewed, marked, and reported, shall and is hereby declared to be a permanent public highway; and the commissioners named in this section, shall before entering on the duties assigned them, take and subscribe the following oath before any justice of the peace, who shall deliver the same to the clerk of the county court of Marion, to be filed in his office: "I ———, do solemnly swear, that I will carefully and impartially examine, mark, and report, the roads designated in this act, strictly conforming to, and fulfilling the requisitions and principles as set forth in the eighth section thereof: So help me God."

SEC. 9. *And be it further enacted*, That the said Thomas and Gurley, and their associates, shall not be authorized to extend their road through the lands of any person or persons without making just remuneration, as required by the existing laws: *Provided always*, that should the said Thomas and Gurley, and their associates, or any person or persons for them, receive a greater toll than is allowed in this act, (except a few cents sometimes, unavoidable in change,) the person offending, or the said Thomas and Gurley and their associates, shall forfeit and pay five dollars for every offence, recoverable before any justice of the peace; which shall go to the informer.

Persons sustaining damage to be remunerated.

Proviso.

Taking too much toll—forfeiture.

SEC. 10. *And be it further enacted*, That if any person or persons shall attempt to evade the payment of any tolls allowed by this act, by passing through the gate or gates authorized to be set up arbitrarily, or having passed, refuse, or neglect to pay, or pass round said gate or gates, such person or persons so offending shall pay to the said proprietors or their agent, the sum of five dollars for every such offence, recoverable before any justice of the peace in this state.

Persons evading payment of toll—forfeiture.

SEC. 11. *And be it further enacted*, That whenever the judge of the county courts for Marion or Franklin, shall be informed in direct terms by any justice of the peace, or by one of the commissioners for either of the counties, that any part of the road is out of repair, such judge shall forthwith notify the proprietors, their agent or agents of this fact, and shall require them without delay to repair the same as directed by this law; and on failure to do so in a reasonable time, such judge shall order a review of the breach alleged by the commissioners of the county where it may have occurred, and should the breach be found actually to exist, the commissioners shall open the gate or gates as the case may require, and report accordingly to the judge of their county courts; and they shall receive three dollars each per day for this service; and should the proprietors or their agents receive any toll before the road shall again be repaired, and received by the court as heretofore directed, they shall forfeit and pay to any person suing for the same, five dollars for every offence.

Judge county court to order review of road in certain cases.

SEC. 12. *And be it further enacted*, That the said proprietors are required to cause the road to be worked on, in its whole extent, and put in a safe, passable condition, for wagons, carriages, and horsemen; this being done and reported by the commissioners to the judge, an order may issue from such court for the erection of gates at the points herein before stipulated, authorizing the proprietors to receive the one-half or two-thirds of the tolls by this act allowed, at the discretion of the court.

Road to be put in good condition.

SEC. 13. *And be it further enacted*, That the whole road shall be put in the repair by this act required, within three years from the first day of January next; if not, all the rights herein vested in the proprietors shall be absolutely forfeited; and should the proprietors for six months at any one time refuse or neglect to repair the road, when the gate or gates shall have

Time allowed for putting road in repair.

been opened by the commissioners under the direction of the court, all their rights so far as neglected shall be forfeited.

Big-bear creek, and Buttahatche—toll bridge may be erected over.

SEC. 14. *And be it further enacted*, That the said Thomas and Gurley, and their associates, shall not be held bound to bridge or ferry Big-bear creek, or the river Buttahatche; but the commissioners named for the purpose of reviewing the ground upon which this road shall pass, shall examine those waters; and should a majority of them be of opinion that it be necessary to bridge or ferry either, or both of said streams, they shall so certify to the judge of the county court for Marion, who shall fix of record the tolls permitted to be received by the undertaker at each or either place; and the said judge shall bind the person or persons so undertaking, in bond and good security, as is by law now required in such cases.

Vacancies may be filled by county court.

SEC. 15. *And be it further enacted*, That the county court of Marion shall have power to fill all vacancies which may occur in the board of commissioners appointed by the eighth section of this act; which commissioners shall be paid by the proprietors of the road herein contemplated, three dollars per day, whilst in service: *Provided always*, That the military road within this state shall not be obstructed in any manner whatever.

Proviso.

Time allowed for putting road in repair.

SEC. 16. *And be it further enacted*, That if the said road shall not be put in the repair as required by this act within three years after the passage thereof, the said Thomas and Gurley shall forfeit all the benefits and privileges granted to them by this act.

Certain persons exempted from paying toll, &c.

SEC. 17. *And be it further enacted*, That nothing in this act shall be so construed, as to authorize said Thomas and Gurley, and their associates, to receive any toll from any person going to or returning from mill, or preaching, or to change the road from crossing Little-bear creek, from where it now crosses the same.

CHAPTER XLI.

An Act to amend an Act, entitled "An Act appointing Commissioners to lay out a Road on or near the Dividing Line between the Counties of Madison and Limestone, passed at Cahawba the 30th of November, 1820."—*Passed December* 31, 1822.

Road to be opened from Crabb's ferry to Big Prairie.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That John Skidmore be, and he is hereby authorized, to cut out and open, at his own expense, so much of said road established and marked out by virtue of an act passed at Cahawba, on the thirtieth of November, eighteen hundred and twenty, as leads from Crabb's ferry to the county line between Madison and Limestone counties, and with the same, north to the Big Prairie; and that so much of the above recited act as requires the county courts of Madison and Limestone counties to appoint overseers, be, and the same is hereby repealed.

Repeal.

Penalty for felling timber, &c.

Sec. 2. *And be it further enacted*, That should any person, by felling timber, or any other means, stop the free passage of said road, they shall for every such offence forfeit and pay the sum of ten dollars, to be recovered before any justice of the peace having cognizance of the same.

CHAPTER XLII.

An Act to establish a certain Road therein named.—*Passed December* 30, 1822.

From Broad-street in Tuskaloosa toward Jonesboro' declared highway.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That a road leading from the east end of Broad-street, in the town of Tuskaloosa, beginning at the centre of the said street, and running on a direct line to a cross fence the dividing line between the widow Mitchell's and Thomas McGehee's; thence on a direct line to Richard Smith's, on the present road leading from Tuskaloosa to Jonesborough, in Jones's valley, is hereby established a public highway.

County court to have jurisdiction.

Sec. 2. *And be it further enacted*, That the judges of the county court and commissioners of the revenue for the county of Tuskaloosa, shall have the power and jurisdiction over the said road, as in other cases.

Persons not deprived of rights.

Proviso.

Sec. 3. *And be it further enacted*, That this act shall not deprive any persons through whose land this road may pass of any right which they heretofore possessed: *Provided*, said road shall be made sixty-six feet wide.

Road to be 66 feet wide.

Sec. 4. *And be it further enacted*, That the aforesaid road shall be laid out sixty-six feet wide, from the place of beginning until it passes through the Seminary land, after which it shall be of the same width and otherwise as other public roads.

CHAPTER XLIII.

An Act declaring certain Roads therein named Public Roads, until otherwise directed by Law.—*Passed December* 24, 1822.

From Cahawba to Canton.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, the old road leading from Cahawba to Canton be, and is hereby established a highway, until otherwise directed by law.

Laid out by Commissioners of Dallas and Wilcox.

Hands apportioned.

Sec. 2. *And be it further enacted*, That the new road laid out by the commissioners of Dallas and Wilcox, be established a highway, until otherwise directed by law; and that the commissioners of Wilcox county court be authorized and required to apportion all the hands liable to work on said roads within said county, and assign to each of the said roads, or that part of them which run into Wilcox county, a proportionate part of the hands liable as aforesaid to work thereon, agreeably to the necessary labour which the said roads may require to keep them in repair.

From Canton to Pursley creek.

SEC. 3. *And be it further enacted*, That the road leading from Canton to Pursley creek, as opened by John H. M'Connoll, be, and is hereby established a public road, and that all the hands liable to work on the roads who may live between Pursley creek and a line drawn due west from Canton to the Alabama river, and between the river and the said road, be apportioned and compelled to work on the said road, any law to the contrary notwithstanding.

CHAPTER XLIV.

To establish a Public Road from Ditto's Landing to Marston Mead's in Blount County.—*Passed December 30, 1822.*

Road established.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That a public road leading from Ditto's landing on the Tennessee river, by the nearest and best route to Marston Mead's, in Blount county, be, and the same is hereby established.

By whom to be laid out and opened.

SEC. 2. *And be it further enacted*, That Tobias Dearick, George D. Staton, and their associates, be, and they are hereby authorized and empowered to lay out and open said road by the most eligible route which they have or hereafter may discover.

Turnpike gates may be erected.

Rates of toll.

SEC. 3. *And be it further enacted*, That the said Tobias Dearick and his associates be, and they are hereby authorized, so soon as they shall have laid out the said road, to erect one or more turnpike gates thereon, and that the said Tobias Dearick and his associates may demand and receive of and from each and every person who shall or may travel on said road, and pass through the said gate or gates, at each gate, (if but one,) For every four wheel carriage, seventy-five cents; for every two wheeled carriage, thirty-seven and a half cents; for every man and horse, twelve and a half cents; for every horse or mule, six and a quarter cents; for every head of cattle, four cents; for every head of sheep, hogs, or goats, two cents: *Provided*, that nothing in this act shall be so construed as to authorize the said Tobias Dearick, George D. Staton and their associates, to erect a turnpike gate or gates on said roads, until the same shall be cut out, from fifteen to twenty feet wide, twelve feet of which shall be grubbed; and all banks of creeks, and hills, put in such order that loaded wagons can pass with convenience.

Proviso.

May establish one or more turnpike gates.

Penalty for passing round gate with intent to avoid paying toll.

SEC. 4. *And be it further enacted*, That the said Tobias Dearick and his associates are hereby authorized to establish one or more turnpike gate or gates, as they may deem necessary, and if two gates are established, they shall have and receive one half the foregoing rates; and if any person shall pass round or through said gate, with intent to avoid the payment of toll, he or she shall, for every such offence, forfeit and pay to the said Tobias Dearick and his associates treble the amount which his, her, or their toll would have been; to be recovered before any justice of the peace, with legal cost for the same: *Provided*, that nothing herein contained shall be so construed as to abolish or interfere with the road now established from Ditto's landing to the said Mead's.

Proviso. Road heretofore established not abolished.

SEC. 5. *And be it further enacted*, That Thomas Parrum, Patrick Scott, John Yielding, and Daniel Bush, be, and they are hereby appointed commissioners, who shall view said road established by virtue of this act; and they, or a majority of them shall decide, whether in their opinion the road is completed, so as to authorize the reception of toll: and if in the opinion of said commissioners the road is not in good and complete order, they shall direct the turnpike gate or gates to be opened; and no toll shall be demanded or received under the penalty of twenty dollars, and the said commissioners appointed by virtue of this act shall receive such compensation, as the county court of Morgan may direct, to be paid by the said Tobias Dearick and his associates.

Commissioners appointed to view road.

Their compensation.

SEC. 6. *And be it further enacted*, That the said Tobias Dearick and his associates, shall commence the said road within twelve months; and the same shall be completed within two years thereafter, or forfeit their right hereby granted; and the said Tobias Dearick and his associates shall have all benefits and profits arising from the tolls, for the period of twelve years: *Provided also*, that nothing in this act shall be so construed as to authorize Tobias Dearick and his associates, to run said road through any part of the Cherokee lands, without first obtaining permission from the Cherokee nation.

Road to be commenced within one year, and completed within two, or right forfeited.

Proviso.

CHAPTER XLV.

An Act to establish a Public Road from the house of John Gandie, in Morgan County, to Baltimore or Morgan's Springs, in Blount County.—*Passed December 23, 1822.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That a public road, leading from the southern settlements of Morgan county, commencing at or near the house of John Gandie, by the nearest route to Baltimore or Morgan's Springs, be, and the same is hereby established.

Road established.

SEC. 2. *And be it further enacted*, That Abraham Stout and his associates, be, and they are hereby authorized and empowered to lay out and open said road, by the most eligible route which they have or hereafter may discover: the said road shall be eighteen feet wide, cleared of every obstruction; twelve feet of which, in the straight general direction of the road, shall be cleared of stumps and grubs, either taken up by the roots or levelled with the ground; the sloping grounds and banks of water courses, shall be so worked on as to ensure the safe and easy passage of horsemen and carriages of every description: all marshes, swamps, and creeks, where necessary, shall be crosswayed or bridged with good and durable timbers, put together in a substantial and workmanlike manner, with ditches on each

By whom laid out and opened.

Width, &c.

side of crossways wherever necessary; the crossways or bridges shall be twelve feet wide.

County court of Morgan to appoint commissioners to examine road.

SEC. 3. *And be it further enacted*, That when the said Abraham Stout and his associates shall have completed said road, and reported the same to the county court of Morgan county, it shall be the duty of said court to appoint three suitable persons to examine said road, and report their opinion to the county court aforesaid; and the said commissioners shall receive for their services such compensation as the county court may direct; to be paid by the said Abraham Stout and his associates.

Rates of toll.

SEC. 4. *And be it further enacted*, That should the commissioners appointed by virtue of the third section of this act, report that said road is in good order, then and in that case the said Abraham Stout and his associates, are hereby authorized to erect a turnpike gate at some convenient place, and demand and receive of, and from each and every person who shall or may travel on said road, the following rates of toll, to wit: for every four wheel carriage, seventy-five cents; for every two wheel carriage, twenty-five cents; for every man and horse, twelve and a half cents; for every loose horse, six and a quarter cents; for every head of cattle, three cents; for every head of hogs, or sheep, two cents: and if any person shall pass round said gate with the intent to avoid the payment of toll, he or she shall, for every such offence, forfeit and pay to the said Abraham Stout and his associates, treble the amount which his or her toll would have been, to be recovered before any justice of the peace, with legal costs for the same.

County court to appoint commissioners.

Road not in order—penalty for exacting toll.

SEC. 5. *And be it further enacted*, That it shall be the duty of the county court of Morgan county, when application is made, to appoint three commissioners to examine said road, and report their opinion to the county court; and if in the opinion of the commissioners appointed by virtue of this act, the road is not in good order, they shall direct the turnpike gates to be opened, and no toll shall be received under the penalty of twenty dollars, until said road shall be repaired in a good and sufficient manner; and the said Abraham Stout and his associates shall have all benefits and profits arising from the tolls, for the period of twelve years.

CHAPTER XLVI.

An Act to authorize David Peobles to continue a Toll Bridge, erected over the Escambia Creek, in the County of Conecuh.—*Passed December* 14, 1822.

Bridge may be continued for ten years.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That David Peobles be, and he is hereby authorized to continue his toll bridge, erected on the Escambia creek, in the county of Conecuh, for the space of ten years, commencing from the passage of this act, and that he be entitled to receive from each and every person crossing the same, the following toll, to wit:

for every four wheel carriage, fifty cents; for every carriage of two wheels, thirty-seven and a half cents; for every man and horse, twelve and a half cents; for every footman, six and a quarter cents; for every led, loose, or pack horse, six and a quarter cents; for every head of cattle, four cents; for every head of hogs, sheep, or goats, two cents. Rates of toll.

SEC. 2. *And be it further enacted*, That if the said David Peobles shall fail to keep the bridge and causeway annexed thereto, extending on each side of the swamp of said creek, in good order, it shall be lawful for any person, on giving information by oath to the judge of the county court, or to any justice of the peace for said county, to recover from the said David Peobles the sum of twenty dollars, one half of which shall be for the use of the county, the other half for the use of the informant: *Provided*, That nothing in this act contained, shall be so construed as to prevent the county court of said county from erecting another bridge at any other point over said creek, and regulating the toll thereof: *And provided also*, that nothing in this act shall be so construed as to prevent any person or persons from fording the said creek without paying toll. Penalty for not keeping bridge in repair. Proviso. Proviso.

CHAPTER XLVII.

An Act to exempt the Citizens of the Town of Selma from working on any Road beyond the Limits of the Town of Selma.—*Passed December* 24, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, all persons resident within the limits of the corporation of the town of Selma, who are by law liable to work on roads, be, and they are hereby exempted from working on any road or roads without the limits of the corporation of the town of Selma.

SEC. 2. *And be it further enacted*, That the intendant and town council of Selma, are hereby declared to possess, and are invested with all the powers and privileges which the judge of the county court and commissioners of roads may have in respect to public roads, and are hereby empowered to enforce the same in the limits of the town of Selma, and no further. Intendant, &c. invested with jurisdiction over roads within the corporation.

SEC. 3. *And be it further enacted*, That no person residing beyond the limits of the town of Selma shall, after the passage of this act, be required to work on any road or street within the corporation limits of the town of Selma.

CHAPTER XLVIII.

An Act to establish a Turnpike Road leading from Lawrence County, to intersect the Military Road at Pikesville, in Marion County.—*Passed December* 26, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That a public road shall be, and is hereby establish- Road established.

ed, to commence at Martin's Gap, in the southwest corner of Lawrence county, running thence the nearest and most direct way, so as to intersect the military road leading from Nashville to New-Orleans, at Pikesville in Marion county.

By whom cut out, width, &c.

SEC. 2. *And be it further enacted*, That Joseph Burleson, and his associates, are hereby empowered to mark and cut out said road, making the same sixteen feet wide, clear of stumps and grubs, and put the same in complete repair, against the first day of October, one thousand eight hundred and twenty-three.

County court to appoint commissioners to examine road when finished.

SEC. 3. *And be it further enacted*, That as soon as the said Joseph Burleson, and his associates, shall report to the county court of Lawrence county, the said road as finished, then the said court shall appoint three or more commissioners, (allowing them such compensation as they may deem reasonable) whose duty it shall be to examine and report to the next county court thereafter, whether the said road is in complete and good repair; and if said commissioners shall report the same in good repair, as aforesaid, it shall and may be lawful for the said Joseph Burleson, to erect a turnpike gate thereon, at any point he may deem most convenient, and shall receive the following rates of toll: for each wagon and team, one dollar; for each two wheeled carriage, fifty cents; for each man and horse, twelve and a half cents; for each head of horses, hogs, cattle, or other stock, three cents; and if at any time any person travelling said road, shall go round said gate, to avoid paying said rates of toll, on conviction thereof before any justice of the peace, shall forfeit and pay the sum of ten dollars to the use of the owner or owners of said gate.

Gate may be erected.

Rates of toll.

Persons going round gate, and not paying toll, forfeiture.

Road not in repair, toll shall not be exacted.

SEC. 4. *And be it further enacted*, That if at any time the said Joseph Burleson, and his associates, shall let the said road get out of repair, then and in that case no toll shall be paid, but the gate shall be open until the same is put in complete order for travelling.

Exclusive right to receive toll for 15 years.

SEC. 5. *And be it further enacted*, That the said Joseph Burleson, and his associates, shall have the exclusive right to receive toll for the keeping open said road, agreeable to the foregoing regulations contained in this act, for the term of fifteen years.

Shall not erect gate on Byler's road.

SEC. 6. *And be it further enacted*, That the said Joseph Burleson, and his associates, shall not erect a toll gate on any part of the road known by the name of Byler's turnpike road.

Road running on Byler's, to be kept in repair by both jointly.

SEC. 7. *And be it further enacted*, That if the said Joseph Burleson, and his associates, should run said road on the same ground where the said Byler's road now runs, the said Joseph Burleson and his associates, shall be at half the expense of making and keeping up said road, as far as it runs with the said Byler's road.

CHAPTER XLIX.

An Act to appoint Commissioners to lay out two Roads, leading from the Ford of Lime Creek; the one to Coffeeville, the other to Tuskaloosa.—*Passed December* 31, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That John Hardy, Parson Davis, Henry Adams, Captain Grumbles, and Lewis Johnson, or a majority of them, be, and they are hereby appointed commissioners to view and mark out a way for a road from the town of Cahawba, to run the nearest and best way the country will admit of, to Daniel Hardy's, on Oldtown creek: that James Pinkston, William Bonnell, Seymour Powell, or a majority of them, be, and they are hereby appointed commissioners to view and mark out a way for a road to run the nearest and best way the country will admit of, from Daniel Hardy's, on Oldtown creek, to intersect the Federal road, leading to Line creek, in Montgomery county: that Edmund Lane, James S. Gaines, and John Davis, or a majority of them, be, and they are hereby appointed commissioners to view and mark out a way for a road to run the nearest and best way the country will admit of, to the county line of Dallas county in the direction to Coffeeville: and, that Alexander M'Leod, John Varner, William Taylor, John Hart, and William Silman, or a majority of them, be, and they are hereby appointed commissioners to view and mark out a way for a road, to run the nearest and best way the country will admit of, from Coffeeville until it intersects the road from the town of Cahawba, to the county line west of Cahawba.

Commissioners for road toward Coffeeville.

For road from Coffeeville toward Cahawba.

SEC. 2. *And be it further enacted,* That Joshua Haggerty, Benjamin Wilson, Robert Hill, Isaac Suttles, and Jesse Hill, or a majority of them, be, and they are hereby appointed commissioners to view and mark out a way for a road, to commence at the wagon ford on Lime creek, and to run thence on the best, nearest, and most direct route the nature of the country will admit of, to the town of Tuskaloosa.

To view road from Line creek to Tuskaloosa.

SEC. 3. *And be it further enacted,* That said commissioners shall be subject to the same rules and regulations as are prescribed by an act passed at Cahawba on the seventeenth day of December, eighteen hundred and twenty-one, entitled An Act to appoint Commissioners to lay out certain Roads therein specified, and for other purposes, for the regulation of the commissioners therein named: *Provided,* that the commissioners herein named shall not be entitled to receive any sum for their services from the state; but that they shall receive such compensation from their counties respectively, as may be by the courts thereof adjudged.

Subject to same rules, &c. as those in act of December 17, 1821.

Proviso.

SEC. 4. *And be it further enacted,* That the commissioners appointed by this act, shall, so soon as they shall have marked out the roads assigned them, make report to the county court

Commissioners to report to county court.

Court to apportion hands.

of their respective counties, who shall order the apportioners to apportion hands to cut out and keep in repair the said roads.

Additional commissioners appointed.

SEC. 5. *And be it further enacted*, That William Murrill, John Flood M'Grew, Robert L. Crawford, and Thomas Murray, be, and they are hereby appointed additional commissioners to act with those mentioned and appointed in the fourth section of an act, entitled An Act to appoint Commissioners to lay out certain Roads therein specified, and for other purposes, passed the seventeenth of December, eighteen hundred and twenty-one.

CHAPTER L.

An Act granting to John Fowler the right of running a Steam Ferry Boat, and a Row Boat or Sail Boat, between the City of Mobile and the Town of Blakeley.—*Passed December* 26, 1822.

May run a boat for five years.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That it shall be lawful for John Fowler of the town of Blakeley, and his assigns respectively, to set up, keep, maintain, and run a steam ferry boat between the city of Mobile and the town of Blakeley, in this state, for and during the term of five years, to be completed from the first day of January next; and the said steam ferry boat shall be capable of carrying six horses, and shall be ready at all times, excepting the months of July, August, and September, in each and every year, to transport and ferry from one to the other of the aforesaid places, persons, carriages, horses, and goods and chattels.

SEC. 2. *And be it further enacted*, That during the months of July, August, and September, in each and every year, during the term of five years, it shall be lawful for the said John Fowler and his assigns respectively, to run either a steam boat, row boat, or sail boat; which shall be ready at all times during the said months of July, August, and September; and said boats shall be suitable for the conveyance of persons, carriages, horses, and goods and chattels.

County court to take bond.

SEC. 3. *And be it further enacted*, That the judge of the county court and commissioners of revenue and roads, of Mobile county, may and shall require of the said John Fowler a bond, with a suitable penalty, and two good and sufficient securities for the faithful performance of the requisitions of this act; and the said county court, and commissioners of revenue and roads, shall annually order, direct, and determine the several rates of ferriages, and the several hours in each day, that the said steam ferry boat, and the said row boat or sail boat, shall be in readiness for the purposes aforesaid.

To establish rate of ferriages.

Penalty for taking extra ferriage.

SEC. 4. *And be it further enacted*, That if the said Fowler, or his assigns, or any person or ferryman employed by him, shall exact, take, or receive any greater or higher rates for transporting any person or persons, horses or carriages, goods or things whatsoever, than shall be, by the judge of the county court and commissioners of revenue and roads aforesaid, limited and established, he or they so offending, shall forfeit and pay for every such offence, the sum of one hundred dollars, with costs of suit, to be recovered before any court having jurisdiction aforesaid, by any person who shall sue for the same; which forfeiture when collected shall be paid into the county treasury.

Other persons taking over horses, &c. liable to a forfeiture.

SEC. 5. *And be it further enacted*, That if any person or persons shall, after the first day of January next, transport, or carry over for pay or hire, from the city of Mobile or the town of Blakeley, to either of those places as aforesaid, any person or persons, horses or carriages, other than the said John Fowler or his assigns, such person or persons shall, for every such offence, forfeit and pay the sum of ten dollars, to be recovered as aforesaid, and applied as aforesaid: *Provided always*, That nothing in this act shall be so construed as to exclude any person or persons, from the right of carrying any person or persons, goods or chattels, free of ferriage, no charge in such case being made either directly or indirectly, by the party so transporting any person or persons, goods or chattels, themselves, their goods or chattels, in their own boats free of ferriage.

Proviso.

Persons suffering damage, by neglect, may bring an action.

SEC. 6. *And be it further enacted*, That if any person or persons shall suffer any loss or damage in their property or persons, by reason of the neglect or wilful misconduct of the said John Fowler, or his assigns, or ferryman or person employed by him, the said John Fowler or his assigns shall be liable to an action by the party aggrieved.

In certain event, county court may declare rights, &c. forfeited.

SEC. 7. *And be it further enacted*, That if it shall be made to appear to the county court of Mobile county, that the said John Fowler or his assigns shall neglect or refuse to comply with the requisitions of this act, it shall and may be lawful for the county court aforesaid, to declare all the rights and privileges herein granted to be forfeited.

CHAPTER LI.

An Act for the Relief of Henry Stokes and others.—*Passed December 22, 1822.*

County court to order payment.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the judge of the county court and commissioners of the revenue for Madison county, be, and they are hereby authorized to order payment out of the county treasury, to Henry Stokes, William Brandon, Samuel Smith, and Charles A. Stokes, such sums as were allowed them at the October term of said court in eighteen hundred and twenty-one, for work done on the Meridian road north of Huntsville.

May settle other claims.

SEC. 2. *And be it further enacted*, That the judge of the county court and commissioners aforesaid, be, and they are hereby authorized and empowered to adjust, and settle all other claims which to them may appear just and reasonable, for work done on other roads in the county of Madison; and to order payment for the same out of the county treasury.

CHAPTER LII.

An Act respecting the Navigation of Limestone River, in Limestone County.—*Passed January* 1, 1823.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the county court of Limestone county shall not have power to compel hands to work in opening or improving the navigation of Limestone river, in Limestone county; any law, usage, or custom to the contrary notwithstanding.

CHAPTER LIII.

Resolutions extending time to John Byler and his associates to open and finish a Road therein named.—*Passed December* 28, 1822.

Allowed till November 1, to complete road.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That John Byler and his associates be allowed until the first day of November next, to open and finish the road known as Byler's turnpike road, agreeably to an act passed at Cahawba the sixteenth day of June, eighteen hundred and twenty-one, entitled An Act to amend an Act passed at Huntsville, December the sixteenth, eighteen hundred and nineteen, entitled An Act to establish a Public Road therein named: *Provided,* that the said John Byler and his associates shall receive no toll from any person who may travel said road, until three commissioners, to be appointed by the county court of Lawrence county, on the application of said Byler and his associates, shall view said road, and report to said court, that the same is completed agreeably to the requisitions of the act authorizing its establishment; *And provided further,* that the commissioners appointed, as aforesaid, shall each, on the performance of the service hereby required of them, be entitled to receive the sum of three dollars per day, for every day they were employed in it, to be paid by the said Byler and his associates; *And provided also,* that if the said commissioners appointed as aforesaid shall fail, for the space of three months after they have received from said Byler and his associates notice of their appointment, to perform the service aforesaid, the said Byler and his associates may thereafter receive the same toll, to which they would be entitled on the report of the said commissioners that said road was completed: *Provided,* the said Byler and his associates shall have made good and sufficient causeways on all the soft ground, and shall have made the said road at least twelve feet wide, clear of stumps and roots.

Proviso.

May receive half toll allowed.

And be it further resolved, by the authority aforesaid, That the said John Byler and his associates be, and they are hereby authorized to demand and receive half the rates of toll allowed by the act to which this resolution is intended to amend, until the first day of November next, any thing in this resolution to the contrary notwithstanding: *And provided further*, that it shall not be lawful for said Byler and his associates to erect a toll gate on any part of said road, which may run with a road which may be granted by the present legislature to Joseph Burleson of Marion county.

CHAPTER LIV.

Resolutions authorizing Commissioners to establish a Road, leading from the City of Mobile to the Line of the State of Mississippi, and for other purposes.—*Passed December* 31, 1822.

Whereas it is represented that the establishment of a public road, leading from the city of Mobile to the line of the state of Mississippi, and from thence to Ford's on Pearl river in the state of Mississippi, would be of great importance and public utility, thereby lessening the distance about one hundred miles from the present route, which the mail and travellers to and from the city of New-Orleans are now compelled to pass, by the way of the city of Mobile and the town of Blakeley, to and from the northern and eastern cities in the United States. Preamble.

SEC. 1. *Be it therefore resolved by the Senate and House of Representatives of the State of Alabama, in genera lassembly convened*, That Nicholas Pope, Christopher Heartt, Henry Gunnison, George Holt, and Thomas G. Newbold, be, and they are hereby appointed commissioners, or a majority of them, to view, mark out, and establish a road, leading from the city of Mobile, in the county of Mobile, to the line of the state of Mississippi, in the most direct and practicable route, to intersect a road leading from thence to New-Orleans; and the commissioners aforesaid are authorized to open said road by voluntary subscriptions. Commissioners appointed to view and mark out.

SEC. 2. *And be it further resolved*, That when the road shall be opened, it shall be the duty of the above commissioners, or a majority of them, to report their proceedings to the county court of Mobile county; and that the road as aforesaid shall afterward be considered a public highway, and that any person who shall fence up, fell trees, or otherwise obstruct the same, shall be subject to all fines, forfeitures, and penalties, as are made and provided for by the laws of this state: *Provided*, that the said commissioners shall receive no pay from the state treasury. Commissioners to report to county court. Proviso.

SEC. 3. *And be it further resolved*, That his excellency the governor be requested to forward a copy of the foregoing resolutions to his excellency the governor of the state of Mississippi, inviting the co-operation of that state, to extend the road as aforesaid to Ford's, on Pearl river. To be transmitted to Governor of Mississippi.

SEC. 4. *And be it further resolved*, That Thomas Williams and William Calvert, of Tuskaloosa county; Isaac Johnson and James Dunlap, of Shelby county, be, and are hereby appointed commissioners, in lieu of the commissioners appointed by an act passed at the last session of the legislature, to lay out and mark a road therein designated. Commissioners to lay out a road therein specified.

Compensation.

SEC. 5. *And be it further resolved*, That the commissioners hereby appointed, shall each receive as compensation for their services, respectively, one dollar per day, to be paid out of the county treasuries thereof, so soon as they may make a satisfactory report to the county courts of their respective counties, that they have performed the duties assigned them; and on the report as aforesaid, the county courts aforesaid shall apportion a sufficiency of hands to cut out the same, taking those most convenient to the different sections of the said road: *Provided*, that the hands shall not be required to work beyond the limits of their respective counties.

CHAPTER LV.

Resolution for the Relief of John A. Elmore.—*Passed December* 31, 1822.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That John A. Elmore be allowed to keep up gates on each side of the Coosa river, across the public road leading from Line creek to Pine flat and Bibb county: *Provided*, That said gates be not locked or so fastened as to prevent passengers from going through said gates at any time.

INTEREST AND USURY.—1805.

CHAPTER I.

An Act against Usury.—*Passed March* 1, 1805.

Interest at 6 per cent.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That no person or persons whatsoever shall take, directly or indirectly, for the loan of any money, wares, merchandise, or other commodity whatsoever, more than the value of six dollars for the forbearance or giving day of payment of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time; and if it shall be ascertained on the plea or answer of the defendant in any suit, that more than the rate of six dollars for the forbearance or giving day of payment of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, be taken or received in or by any bond or note whatever, for the payment of any principal or sum of money, goods, wares, merchandise, commodity, or other thing whatever, bought or sold, no interest or premium whatever for forbearance or giving day of payment, shall be allowed or received on such bond or note, but the principal sum only may be recovered.

And if more be taken in any bond or note for money, &c. the principal only may be recovered.

SEC. 2. *And be it further enacted*, That if more than the rate of six dollars for the forbearance or giving day of payment of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, shall be taken, accepted, or received, by way of any corrupt bargain, loan, exchange, or interest of any money, wares, merchandise, commodities, or other things, bought or sold, the same, together with the whole amount of interest taken, accepted, or received therewith, may be recovered by any person paying the same, by action of trespass on the case, with costs of suit.

If greater interest than that be taken upon any corrupt bargain, &c. the whole may be recovered by the person paying the same.

SEC. 3. *And be it further enacted*, That the rate of six dollars for the forbearance, or giving day of payment of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, may be taken, allowed, and recovered on all bonds and notes in writing, ascertaining the sum due, after the same is due and payable.

That rate of interest in what cases allowable.

CHAPTER II.

Extracts from an Act, entitled " An Act regulating Judicial Proceedings in certain cases, and for other purposes."—*Passed December* 18, 1811.

SEC. 25. *And be it further enacted*, That when partial payments are made on bonds, contracts, or assurances for the payment of money or property, that bear interest, agreeably to the laws of this territory, the interest that then thus accrued, shall be first credited, and the balance of such partial payment shall be placed to the payment of the principal.

Partial payments made, interest first credited.

SEC. 26. *And be it further enacted*, That all debts due, by the judgment, sentence, or decree of any court, shall hereafter bear interest in the same manner as other debts.

Debts due by judgments, &c. of courts, to bear interest.

CHAPTER III.

An Act to amend an Act, entitled "An Act against Usury."—*Passed February* 13, 1818.

[* SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That any rate of interest, or premium for the loan or use of money, wares, merchandise, or other commodity, fairly and *bona fide* stipulated and agreed upon by the parties to such contract, expressed in writing, and signed by the party to be charged therewith, shall be legal and recoverable, and no *bona fide* contract shall be vacated, or in any manner impaired, by reason of any premium, or rate of interest, so stipulated and expressed.]

Lawful to receive any interest expressed in writing.

SEC. 2. *And be it further enacted*, That on all contracts, written or verbal, ascertaining the sum due, where no specific premium or rate of interest is expressed, interest shall be taken, recovered, and allowed, at the rate of eight per centum per annum, from and after said sum is due and payable.

Where no sum is expressed, 8 per cent.

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* An Act to repeal certain laws passed November 22, 1819; enacts that the first section of this Act shall be, and the same is hereby repealed.

Repealing clause.

SEC. 3. *And be it further enacted*, That all acts, or parts of acts contravening the provisions of this act, be, and the same are hereby repealed: *Provided*, that nothing in this act contained, shall be so construed as to make it legal for any bank to receive more than at the rate of six per centum per annum, for and upon its loans and discounts.

Proviso.

NOTE.—An Act passed in November, 1818, "concerning Judicial Proceedings;" enacts, "that all Judgments shall hereafter bear interest from their date, at the rate established by law for contracts specifying no rates: it was repealed in December, 1819.

CHAPTER IV.

An Act to regulate the Rate of Interest.—*Passed December* 17, 1819.

Eight per ct. legal interest.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the first day of February next, no person or persons shall, upon any contract whatsoever, take, directly or indirectly, for the loan of any money, wares, merchandise, bonds, notes of hand, or other commodities whatsoever, above the value of eight dollars, for the forbearance of one hundred dollars, for one year, and after that rate for a greater or less sum, or for a longer or shorter time; and all bonds, contracts, covenants, conveyances, or assurances, hereafter to be made, for payment or delivery of any money, goods, wares, or merchandise so to be lent, on which a higher rate of interest is received or taken, than is hereby allowed, shall be utterly void and of no effect.

Penalty for taking more than 8 per cent.

SEC. 2. *And be it further enacted*, That every person who, upon any contract, shall take, accept, or receive, by way or means of any corrupt bargain, loan, exchange, or shift of any money, goods, wares, merchandise, commodities, or bonds, or notes, or other thing whatsoever, above the rate of eight dollars for the forbearance or giving day of payment of one hundred dollars for one year, and so after that rate for a greater or less sum, or for a longer or shorter time, and so after that rate or proportion, for goods, wares, merchandise, commodities, bonds or notes, when such shall be lent, contracted or agreed for, taken, acccepted, or received, shall forfeit and lose, for every such offence, the whole value or amount, together with all interest thereon: one half of which forfeiture shall be paid into the public treasury, for the use of the state, and the other half to him or them, that will inform and sue for the same; to be recovered with costs by action of debt, in any court of record in this state: *Provided*, that if the borrower should be the informer, as aforesaid, then, and in that case, the whole amount, thus recovered, shall be paid into the treasury, for the use of the state: *Provided also*, that every such action of debt, as aforesaid, shall be commenced and sued, in the lender's lifetime, or within three years after the commission of the offence, or in one year after the time of payment of any money, goods, wares, or

Proviso.

Action to be brought within three years.

merchandise, contracted to be paid on any usurious agreement or contract.

Judges to charge grand juries.

SEC. 3. *And be it further enacted*, That it shall be the duty of the judges of the circuit courts, to charge the grand jury of the respective counties within ther circuits, to present all, and every person who may violate the provisions of this act, that may come within their knowledge; and on every such presentment, it shall be the duty of the solicitor for the state, to have issue joined, or made upon such presentments, and prosecute the same under the rules and regulations prescribed for the prosecution of *qui tam* actions; and upon conviction, the whole amount, thus ascertained to have been lent, or taken contrary to the provisions of this act, shall be paid into the treasury, for the use of the state.

Usurious bonds void.

Obligor may be witness.

Proviso.

SEC. 4. *And be it further enacted*, That when any note or notes, bond or bonds, shall or may be upon, or on account of any usurious contract, the same shall be void, and of no effect; and the obligor or obligors for ever exonerated from the payment of the same; and the obligor or obligors shall be deemed by this act competent witnesses, to prove the usurious consideration of any such bond or bonds, note or notes: *Provided*, That this act shall not be so construed, as to prohibit the sale of any bond or bonds, which may have been fairly and *bona fide* given, and not given for the purpose of evading the provisions of this act.

Borrower may be witness.

Proviso.

Penalty for perjury.

SEC. 5. *And be it further enacted*, That in all cases whatsoever, when any suit or action shall be brought in any court of record in this state, touching or concerning any usurious bond, specialty, promise, or agreement, the borrower or party to such usurious bond, specialty, contract, promise, or agreement, from whom such higher rate of interest is, or shall be taken, shall be a good and sufficient witness to give evidence of such offence: *Provided*, That if any person against whom such evidence is offered to be given, will deny upon oath, to be administered in open court, the truth of what such witness offers to swear against him, then such evidence shall not be admitted; and if any witness or party shall forswear himself, in any such matter, and be thereof lawfully convicted, he or she shall suffer all the pains and penalties by law inflicted on persons convicted of wilful and corrupt perjury.

Violators of this act, disqualified from being bank directors.

Oath of bank directors.

SEC. 6. *And be it further enacted*, That from and after the passage of this act, any person or persons, who shall be lawfully convicted of violating this act, shall be, and hereby is for ever disqualified from being a director of any bank or banks in this state; and any person or persons, who hereafter may be director or directors of any bank or banks within this state, who may be convicted as aforesaid, shall forfeit his or their seat or seats, as director or directors; and any person or persons who may, after the passage of this act, be elected or chosen a director or directors of any bank or banks within this state, before entering upon the duties of his office, shall take the following oath, to wit:—" I, ————, do solemnly swear, (or affirm) that I have not, either directly or indirectly, violated the act, entitled 'An Act regulating the Rate of Interest,' nor will I be guilty of violating said act, either directly or indirectly, while I continue in the office of director: So help me God."

JOINT OBLIGORS, PARTNERS, AND SECURITIES.—1807.

CHAPTER I.

Extracts from "An Act establishing Superior Courts, and declaring the Powers of the Territorial Judges."—*Passed in* 1807.

NOTE.—The first of the following Section, (viz. Sec. 13,) was originally a part of an Act passed in 1803.

Joint defendants living in different districts, how sued.

SEC. 13. *Whereas* joint obligors and other persons, against whom a joint cause of action may exist, frequently reside in different districts, or counties, so that the same individual process cannot reach both or all of such persons, whereby parties having just demands are greatly delayed in prosecuting the same: for remedy whereof, *Be it enacted*, That where any such joint cause of action shall exist, it shall be lawful for the plaintiff in such suit or action, to sue out two or more writs, directed to the sheriffs or other proper officers of the different counties where such defendants or parties jointly chargeable may be found, which process such sheriff or other officer shall execute accordingly, and return to the court from which the same issued, as in other cases; and such writs, so issued and returned, shall be filed together, and shall have the same force and effect, and the same proceedings and recovery may be thereupon had, as if one single writ had issued against all the defendants jointly; but it shall be the duty of the clerk or attorney issuing such process to endorse thereon, that both or all of the said writs are for one and the same cause of action, or otherwise the same shall abate on the plea of the defendant.

SEC. 14. *And whereas* it is a rule of common law, that in cases of the death of a joint obligor, the debt can never survive against his heirs, executors, or administrators, which rule is frequently injurious and oppressive to the surviving obligors: to remedy which, *Be it enacted*, That from and after the passage of this act, in case of the death of one or more joint obligor or obligors, the joint debt or contract shall and may survive against the heirs, executors, and administrators of the deceased obligor or obligors, as well as against the survivor or survivors; and when all the obligors shall die, the debt or contract shall survive against the heirs, executors, and administrators of all the said joint obligors.

SEC. 15. Every joint bond, covenant, bill, or promissory note, shall be deemed and construed to have the same effect in law, as a joint and several bond, covenant, bill, or promissory note, and it shall be lawful to sue out process and proceed to judgment against any one of the obligors, covenanters, or drawers of such bond, covenant, bill, or promissory note, in the same manner as if the same were joint and several; any law or usage to the contrary notwithstanding.

CHAPTER II.

An Act to empower Sureties to recover Damages in a summary way.—*Passed December 7, 1811.*

Judgment against obligors in favour of securities.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That in all cases where judgment hath been, or hereafter may be entered up in any of the courts of record within this territory, against any person or persons as security or securities, their heirs, executors, or administrators, upon any note, bill, bond, or obligation, and the amount of such judgment or any part thereof, hath been paid or discharged by such security or securities, his, her, or their heirs, executors, or administrators, it shall and may be lawful for such security or securities, his, her, or their executors or administrators, to obtain judgment by motion against such principal, obligor, or obligors, payer or payers, his, her, or their heirs, executors, or administrators, for the full amount of what shall have been paid by the security or securities, his, her, or their executors or administrators, in any court where such judgment may have been entered up against such security or securities, his, her, or their heirs, executors, or administrators: *Provided,* that the court shall, in all cases arising under this act, direct a jury to be empannelled to try the facts, arising on any motion, and that on good cause shown on oath, the court may direct the same to be continued for one term, and no longer.

Sheriff to levy on the property of principal.

Sec. 2. *And be it further enacted,* That when an execution may issue against any principal and security, on any bill, bond, note, or other instrument, the sheriff shall be authorized, and he is hereby directed, to levy on the property of the principal first, if he has any property in the county where the security resides: *Provided,* the said security make oath before some justice of the peace, that he is security upon the said bond, bill, note, or other instrument, which said affidavit shall be filed by the sheriff in his office.

Sec. 3. *And be it further enacted,* That where the principal obligor or obligors have, or hereafter shall become insolvent, and there have been or shall be two or more securities jointly bound with the said principal obligor or obligors, in any bond, bill, note, or other obligation, for the payment of money or other thing, and judgment hath been or hereafter may be obtained against one or more of such securities, it shall and may be lawful for the court before whom such judgment was or shall be obtained, upon motion of the party or parties against whom judgment hath been entered up as securities aforesaid, to grant judgment and award execution against all and every of the obligors and payers, and their legal representatives, for their and each of their respective shares and proportions of the said debt: *Provided*, that nothing in this act contained shall in any wise impair the obligation of each and every of the said obligors to pay and satisfy the whole of any such debt in case of the insolvency of the other obligors.

Securities shall not confess judgment.

SEC. 4. *And be it further enacted*, That no security or securities, his, her, or their executors or administrators, shall be suffered to confess judgment, or suffer judgment to go by default, so as to distress his, her, or their principal or principals, if such principal or principals will enter him, her, or themselves, a defendant or defendants to the suit, and tender to the security or securities, his, her, or their executors or administrators, other good and sufficient collateral security to be approved of by the court before whom the suit shall be pending.

Bail may obtain judgment by motion against for whose appearance they were bound.

SEC. 5. *And be it further enacted*, That in all cases where judgment hath been or shall hereafter be entered up in any of the courts of record in this territory, against any person as bail for the appearance of another, to defend any suit depending in such court, and the amount of such judgment, or any part thereof hath been paid, or discharged by such bail, his, her, or their heirs, executors, or administrators, it shall and may be lawful for such bail, his, her, or their heirs, executors, or administrators, to obtain judgment by motion against the person or persons for whose appearance they were bound, his, her, or their heirs, executors, or administrators, for the full amount of what shall have been paid by the said bail, his or her heirs, executors, or administrators, in any court where judgment may have been entered up against such bail: *Provided always*, that no judgment shall be obtained by motion as aforesaid, unless the party or parties against whom the same is prayed, shall have ten days previous notice thereof.

NOTE.—An Act for the relief of Sureties in certain cases, will be found under title "Executions," Chapter 8.

CHAPTER III.

An Act for the better Regulation of Judicial Proceedings.—*Passed February 7, 1818.*

Lawful to sue out process against joint obligors.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That every joint bond, covenant, bill, promissory note, or judgment of any court of record of any state or territory of the United States, shall be deemed and construed to have the same effect in law, as a joint and several bond, covenant, bill, promissory note, or judgment; and it shall be lawful to sue out process and proceed to judgment against any one or more of the obligors, covenanters, or drawers of any such joint bond, covenant, bill, or promissory note, or against any one or more of the defendants to any such joint judgment.

Sec. 2. *And be it further enacted*, That whenever a writ shall issue against any two or more joint, or joint and several obligors, covenanters, or drawers of any such bond, covenant, bill, or promissory note, or against two or more of the defendants to any such joint judgment, it shall be lawful for the plaintiff, or his attorney, at any time after the return of said writ, or an alias writ, to discontinue such action against any one or more of the defendants, on whom such writ, or alias writ, shall not have been executed, and proceed to judgment against any one or more of said defendants, on whom said writ shall have been executed, or proceed to issue an alias or pluries writ, at his election.

Plaintiff may discontinue suit against any one or more of defendants on a joint obligation.

Note.—The third section of this act, for the better regulation of judicial proceedings will be found under Title "Executions," Chapter 11.

The fourth and fifth sections (which provided that in certain actions of debt, judgment might be had at the return term, if the writ had been served sixty days before: and that all executions should be returned in ninety days after the teste) were repealed, November 22, 1819.

For sections 6 and 7, see "Executions," Chapter 11.

Sec. 8. *And be it further enacted*, That whenever any cause of action may exist against two or more partners, trading in copartnership, or against partners of any denomination whatever, it shall be lawful to prosecute an action against any one or more of them: and when a writ shall be issued against all the partners of any firm, service of the same on any one of them shall be deemed equivalent to a service on all: and the plaintiff may file his declaration and proceed to judgment, as if the said writ had been served on each defendant; and the judgment shall be equally valid and effectual against all the defendants.

Lawful to issue writs against any one or more partners.

Lawful to serve writs on any one of the firm.

Sec. 9. See "Chancery Proceedings."

Sec. 10. See "Attachments."

Sec. 11. See "Bail."

Sec. 12. *And be it further enacted*, That where any suit shall be instituted against two or more persons as partners in any firm, if one or more persons, not partners in said firm, shall have been sued as such; the court before whom such suit is or shall be pending, shall discontinue said suit against such person or persons as shall appear not to be partners in said firm, and proceed to judgment and execution against all or any of the defendants in such action who shall appear to be partners.

Suits can be discontinued against such persons as may not appear to be a partner.

CHAPTER IV.

An Act for the Relief of Securities.—*Passed December* 18, 1820.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That in all cases, where suit is or may hereafter be brought on any joint, or joint and several bond or note, and but one of the obligors, or payers, shall be served with process, it shall and may be lawful for such obligor, or payer, to give notice in writing to the other obligors or payers, ten days before the trial

Joint obligors, when sued separately, may move against co-obligor.

term of said suit, that he has been sued on such bond, or note, and that he will, at the time when said suit is tried against him, move the court where such suit is depending, for judgment against him or them. And it shall be the duty of said court, upon sufficient proof, to give judgment according to the right and justice of the case, and direct execution to issue either for the obligee, or payee, in such bond or note, or for the plaintiff in the motion, as may best comport with the justice of the case, and the rights of the parties, and with such endorsements as may be necessary to effect the object; and the executions in both cases, shall be put in the hands of the sheriff or other officer at the same time.

Defendant in such motion may plead.

SEC. 2. *And be it further enacted,* That in all cases of motions being made as aforesaid, the defendant therein may plead any plea which may be necessary to try the cause according to the right and justice thereof, and a jury shall be empannelled to try the issue joined between the parties, as in other cases.

CHAPTER V.

An Act supplementary to an Act, entitled "An Act for the Relief of Securities."—*Passed December* 15, 1821.

Judgment to be obtained against principal by motion.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That in all cases where judgment hath been or shall hereafter be entered up in any courts of record, or by any justice of the peace within this state, against any person or persons as security or securities, their executors or administrators, upon any note, bill, bond, or obligation, and in all cases where execution hath been or shall hereafter be awarded by, or issued from any of the courts of record, or any justice of the peace within this state, against any person or persons as security or securities, his, her, or their heirs, executors, or administrators, upon any bond, obligation, or recognizance, and the amount of such judgment or obligation, or any part thereof, hath been paid or discharged by such security or securities, his, her, or their heirs, executors, or administrators, it shall and may be lawful for such security or securities, his, her, or their heirs, executors, or administrators, to obtain judgment by motion against such principal obligor or obligors, recognizor or recognizors, his, her, or their heirs, executors, or administrators in any court, or before any justice of the peace, where such judgment may have been entered up, and execution awarded against such security or securities, his, her, or their heirs, executors, or administrators, for the full amount which shall have been paid, with interest thereon from the time the same shall have been paid and satisfied, until such judgment shall be discharged.

Interest allowed.

Debt paid by securities equally.

SEC. 2. *And be it further enacted,* That when the principal obligor or obligors, recognizor or recognizors, have or shall hereafter become insolvent, and there have been or shall be two or more securities jointly bound with the said principal obligor or obligors, recognizor or recognizors, in any bond, bill, note, recognizance, or other obligation for the payment of money or other thing, and judgment hath been or shall hereafter be obtained, and execution awarded and issued against one or more of such securities. or his or their legal representatives, it shall and may be lawful for the court, or justice of the peace before whom judgment and execution were or shall be obtained, upon motion of the party or parties, his or their legal representatives, against whom judgment hath been entered up, and execution awarded and issued, as securities aforesaid, to grant judgment and award execution against all and every of the obligors and recognizors, and their legal representatives, for their, and each of their respective shares and proportions of the said debt or damages.

Securities not to confess judgment, or suffer it to go by default.

SEC. 3. *And be it further enacted*, That no security or securities, his, her, or their executors or administrators, shall be suffered to confess judgment, or to suffer judgment to go by default, so as to distress his, her, or their principal or principals, if such principal or principals will enter him, her, or themselves as defendant or defendants to the suit, and tender to the said security or securities, his, her, or their executors or administrators, other good and sufficient collateral security, to be approved of by the court before whom the suit shall be depending.

Common bail liable for defendant, may have judgment by motion.

SEC. 4. *And be it further enacted*, That in all cases where judgment hath been or shall hereafter be entered up in any of the courts of record, or by any justice of the peace of this state, against any person as common bail for the appearance of another to defend any suit depending in such court, and the amount of such judgment, or any part thereof, hath been paid or discharged by such common bail, his, her, or their heirs, executors, or administrators, it shall and may be lawful for such common bail, his, her, or their heirs, executors, or administrators, to obtain judgment by motion against the person or persons for whose appearance they were bound, his, her, or their heirs, executors, or administrators, for the full amount of what shall have been paid by the said common bail, his, her, or their heirs, executors, or administrators, in any court, or before any justice of the peace, where judgment may have been entered up against such common bail: *Provided always*, That no judgment shall be obtained on motion as aforesaid, unless the party or parties against whom the same is prayed, shall have at least ten days notice previous thereof: *And provided also*, That in all cases, no judgment shall be entered up on motion as aforesaid, when the amount exceeds fifty dollars, unless by a lawful jury it shall be so awarded.

Defendant to have ten days notice.

Securities may cause bond to be put in suit in certain cases.

SEC. 5. *And be it further enacted*, That when any person or persons shall hereafter become bound as security or securities by bond, bill, or note, for the payment of money or any other article, and shall apprehend that his or their principal or principals is or are likely to become insolvent, or to migrate from this state without previously discharging any such bond, bill, or note, it shall and may be lawful for such security or securities in every such case, (provided an action shall have accrued on such bond, bill, or note,) to require, by notice in writing, of his or their creditor or creditors, forthwith to put the bond, bill, or note, by which he or they may be bound as security or securities, as aforesaid, in suit; and unless the creditor or creditors so required to put such bond, bill, or note in suit, shall in a reasonable time commence an action on such bond, bill, or note, and proceed with due diligence in the ordinary course of law, to recover judgment for, and by execution to make the amount due by such bond, bill, or note, the creditor or creditors, so failing to comply with the requisition of such security or securities, shall thereby forfeit the right which he or they otherwise would have had, to demand and receive of such security or securities the amount which may be due by such bond, bill, or note.

If not done, securities exonerated.

Benefit of the act extended to administrators, &c.

SEC. 6. *And be it further enacted*, That any security or securities, or in case of his or their death, then his or their executors or administrators, may in like manner, and for the same cause, make such requisition of the executors or administrators of the creditor or creditors, and in case of the failure of the executors or administrators to proceed, such requisitions as aforesaid being duly made, the security or securities, his, her, or their executors or administrators making the same, shall have the same relief that is herein before provided for a security or securities, where his or their creditor or creditors shall be guilty of a similar failure: *Provided always*, That nothing in the two last sections contained, shall be so construed as to effect bonds with collateral conditions, or the bonds that may be entered into by guardians, executors, administrators, or public officers: *And provided also*, That the rights and remedies of any creditor or creditors, against any principal debtor or debtors, shall be in no wise affected thereby, any thing to the contrary, or seeming to the contrary notwithstanding.

Not to effect bonds with collateral condition.

SEC. 7. *And be it further enacted*, That all acts and parts of acts coming within the purview of this act, be, and the same are hereby repealed, and that this act shall commence and be in force from and after the first day of March, one thousand eight hundred and twenty-two.

JUDICIAL PROCEEDINGS AT COMMON LAW.—1807.

NOTE.—The Ordinance of the Congress of the United States, passed on the 13th day of July, 1787, for the Government of the Territory northwest of the River Ohio, the provisions of which were in the year 1798 extended to the Mississippi Territory, contains the following clause:

"The inhabitants of the said Territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury, of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law." A considerable part of the provisions relating to judicial proceedings which are contained in the Digest of 1807 have been superseded by subsequent laws. Those which remain in force are the following; excepting those which naturally fall under other titles, as Attachments, Courts, Bills of Exchange, Promissory Notes, Executions, and Joint Obligors.

CHAPTER I.

An Act establishing Superior Courts, and declaring the Powers of the Territorial Judges.—*Passed February*, 1807.

NOTE.—Most of the preceding sections of this law will be found under the title of "Courts Superior," chapter 1.

The day of issuing process to be noted.

SEC. 30. *And be it further enacted*, That the clerk issuing process shall mark thereon the day on which the same shall be issued, and the sheriff or other officer receiving the same in order to execute, shall in like manner mark on every process the day on which he shall have received it: and every clerk, sheriff, or other officer, neglecting so to do, shall forfeit and pay the sum of two hundred dollars, to be recovered by action of debt, in any court of record having cognizance thereof, with costs, by any person who shall sue for the same.

Time and mode of serving writs.

SEC. 31. *And be it further enacted*, That the time of serving and executing writs, and process, returnable into any circuit court, or into the supreme or superior courts aforesaid, shall be as prescribed* by the act establishing county courts; and hereafter it shall not be necessary that any declaration or copy thereof, accompany such writ or process, but a copy of such writ shall be left with the defendant, at the time of serving, and by the officer serving the same. And it shall be the duty of the clerk, or plaintiff's attorney, to endorse on the back of the writ, the cause of the action, the nature of the specialty, or the other grounds on which the action is founded: And the sheriff, on executing the writ, shall deliver to the defendant, together with a copy of the writ, a copy of the said endorsement.

Time of returning writs.

SEC. 32. *And be it further enacted*, That all writs and other process, original as well as *mesne*, in civil causes, (subpœnas for witnesses excepted, which may be made returnable immediately) shall be returnable on the first day of the term succeeding the issuing of such writs or process; and if the sheriff or other officer shall neglect to return any process on the first day of such term, he shall be liable as is usual on the expiration of a rule for the return of the same. Any process, warrant, or precept, issued by any judge, justice, or clerk, on any criminal prosecution, on behalf of the government, may be issued at any time, and made returnable on any day of the term.*

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* i. e. Five days before the first day of the next term. See title "Courts" (Inferior.)

Of appeals.

SEC. 33. *And be it further enacted*, That the defendant in any cause, may plead as many several matters as he may judge necessary to his defence: *Provided* he be not admitted to plead and demur to the whole: *And provided also*, that no plea of *non est factum* shall be admitted to be pleaded, but when accompanied with an affidavit of its truth.

SEC. 34. *And be it further enacted*, That no plea in abatement shall be received in any court, except accompanied with an affidavit of the truth of such plea, or the truth of it otherwise appear.

Of costs.

SEC. 35. *And be it further enacted*, That in all other cases, in civil actions, the party in whose favour judgment shall be given, or in case of nonsuit, dismission, or discontinuance, the defendant shall be entitled to full costs, except when it is or may be otherwise directed by law.

Of errors and amendments.

SEC. 36. *And be it further enacted*, That no summons, writ, declaration, return, process, judgment, or other proceedings, in any of the courts of this territory, shall be abated, arrested, quashed, or reversed, for any defect or want of form; but the said courts respectively, shall proceed and give judgment, according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form, in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially set down and express, together with his demurrer as the cause thereof; and the said courts respectively, shall and may, by virtue of this act, from time to time amend all and every such imperfections, defects, and want of form, (other than those which the party demurring shall express as aforesaid) or any mistake in the christian name or surname of either party, sum of money, quantity of merchandise, day, month, or year, in the declaration or pleading, the name, sum, or quantity, or time, being right in any part of the record or proceedings, and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts respectively shall, in their discretion, and by their rules, prescribe.†

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* This provision has been modified by the act of 1819, section 6. See Chap. 24, under this title.

† An Act establishing Courts, and regulating Judicial Proceedings, passed in February, 1805, and which is the groundwork of the present law, *enacted*, "That the statutes of England for the amendment of the law, commonly called the statutes of *jeofails*, down to the sixteenth year of George the Third, be, and the same are hereby adopted and declared to be in force in this Territory."

Sec. 37. *And be it further enacted*, That every person or persons desirous of suffering a nonsuit on trial, shall be barred therefrom, unless he or they do so before the jury retire from the bar: and no more than two new trials shall be granted in the same cause; and two nonsuits shall be considered equal to a verdict against the party suffering the same.

Proceedings on judgments on demurrer, &c.

Sec. 38. *And be it further enacted*, That in all judgments on demurrer, confession, *non sum informatus*, or by default, in actions of debt for a sum certain, the said courts are authorized to issue executions for the sums of such judgments, with such interest by way of damages, as may be legally due, and costs of suit; and in all interlocutory judgments, a writ of inquiry shall be awarded, and such writ of inquiry may be executed at the next succeeding term, and the damages assessed by a jury attending the court in which they were awarded, except they be awarded in the supreme court; then to be executed at the next circuit court in which the suit was instituted.

Death or absence of a judge, not to produce discontinuance.

Sec. 38. *And be it further enacted*, That no court, nor any proceedings therein, shall be discontinued by the death of any of the judges or justices thereof, or by their non-attendance at any term; but in such cases, all actions and suits, matters and things depending therein, shall stand continued, of course, to the next succeeding term.

CHAPTER II.

Extracts from an Act regulating the Mode of summoning Juries, and for other purposes.—*Passed February* 6, 1807.

Sec. 6. *And be it further enacted*, That when any demurrer to evidence, demurrer to the declaration or plea in any cause depending before the several courts in this territory, shall appear frivolous and intended for delay, it shall be lawful for the court where the cause is depending, to reject such demurrer on motion, and proceed to trial as if the same had not been offered.

When plaintiff resides out of the territory, attorney to give security for costs.

* Sec. 9. *And be it further enacted*, That when any process shall issue from any of the courts of this territory, by the directions of any attorney, for any person or persons residing out of this territory, against any person or persons residing within the same, the person or persons suing for such process, or prosecuting such suit at the return of such process, or at any time

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Instead of this clause in the act of 1805, the Legislature who adopted the Digest of 1807, also adopted the general provision contained in the above section, which, though it has the advantage of rendering it needless to refer to foreign laws, which should, if possible, be in all cases avoided, yet it has probably circumscribed the power of admitting amendments which the Legislature probably intended to give, and which substantial justice unquestionably requires The above section appears to have been borrowed from the 16 and 17 Charles II. Ch. 8, and the 4 of Ann, Ch. 16: but subsequent English Statutes have gone much further, and extended to the amendment even of writs of error, which none of the other statutes did, because they gave only a power of amending, in *affirmance* of judgments, whereas writs of error have a tendency operating directly on the other side.

* Sections seven and eight repealed, or obsolete.

thereafter when required, shall, upon motion, be ruled to give sufficient security for all costs accruing in such action or suit; and if such attorney shall fail to give such security, being thereto required, the suit shall be in fact dismissed, and execution may issue against such attorney for all such costs.

CHAPTER III.

Extracts from an Act establishing the Fees of the several Officers therein named. *Passed February* 6, 1807.

Suits to be dismissed, if security be not given for costs.

SEC. 9. *And be it further enacted,* That every action at common law, or suit in chancery, commenced in the name of any person residing out of this territory, shall be dismissed if security be not given with the clerk of the court from whence the process shall issue, or wherein it shall be depending, within sixty days after notice shall, at any time during such non-residence, have been given to the plaintiff or his attorney by some person interested, that such security is required for the payment of the costs which may be awarded to the defendant, and also of the fees that are or may become due to the officers of the court; and after security shall be so given, and the fees not paid at the time the same become due, it shall and may be lawful for the court in which the cause was commenced, to enter up judgment on motion against such security, and award execution accordingly.

And execution awarded.

SEC. 10. *And be it further enacted,* That it shall be the duty of the sheriff to summon three constables to attend each circuit court, who shall attend accordingly, or pay a fine at the discretion of the said court, not exceeding ten dollars.

CHAPTER IV.

Extracts from an Act regulating Judicial Proceedings, &c.—*Passed December* 18, 1811.

Persons instituting suits, and after such institutions, removing out of the territory, required to give security for costs.

SEC. 8. *And be it further enacted,* That if any person resident in this territory, shall institute any suit, whether at common law or in chancery, in any of the courts of this territory, and shall after the institution thereof remove out of this territory, such person shall be bound to give security for the cost of such suit, in the same manner and under the same restrictions pointed out for non-resident plaintiffs, in the ninth section of the act, entitled "An Act establishing the Fees of the several Officers therein named, and for other purposes," passed the sixth day of February, one thousand eight hundred and seven.

CHAPTER V.

An Act concerning Defalcation.*—*Passed February 28, 1799.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That if two or more, dealing together, be indebted to each other upon bonds, bills, bargains, promises, accounts, or the like, and one of them commence an action in any court, if the defendant cannot gainsay the deed, bargain, or assumption, upon which he is sued, it shall be lawful for such defendant to plead payment of all or part of the debt, or sum demanded; and give any bond, bill, receipt, or account in evidence: and if it shall appear that the defendant hath fully paid or satisfied the debt or sum demanded, the jury shall find for the defendant: and judgment shall be entered, that the plaintiff shall take nothing by his writ, and shall pay the costs. And if it shall appear that any part of the sum demanded be paid, then so much as is found to be paid shall be defalked and deducted out of the plaintiff's demands: and the plaintiff shall have judgment for the residue only, with costs of suit. But if it appear to the jury that the plaintiff is overpaid, then they shall give in their verdict for the defendant, and withal, certify to the court, how much they find the plaintiff to be indebted, or in arrear to the defendant, more than will answer the debt or sum demanded. And the sum or sums so certified, shall be recorded with the verdict, and shall be deemed a debt of record: and if the plaintiff refuse to pay the same, the defendant, for the recovery thereof, shall have a *scire facias* against the plaintiff in the said action, and have execution for the same, with the costs of that action. *Provided always,* That in all cases where a tender shall be made, and full payment be offered by discount or otherwise, in such specie as the party by contract or agreement ought to do, and the party to whom such tender shall be made doth refuse the same, and yet afterward will sue for the debt or goods so tendered, the plaintiff shall not recover any costs in such suit. *Provided also,* That in all cases where the plaintiff and defendant having accounts to produce one against another, shall by themselves, or attorneys or agents, consent to a rule of court, for referring the adjustment thereof to certain persons mutually chosen by them, in open court, (the award or report of such referees being made according to the submission of the parties, approved of by the court, and entered upon the record, or roll,) shall have the same effect, and be deemed and taken to be as available in law, as a verdict given by twelve men. And the party to whom any sum or sums of money are thereby awarded to be paid, shall have judgment or a *scire facias,* for the recovery thereof, as the case may require, and as is herein before directed, concerning sums found and settled by a jury.

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* From an Act of Pennsylvania, passed 1705.

CHAPTER VI.

An Act to prevent Suits from abating on the Death of either Party.—*Passed May* 13, 1802.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That when any suit shall be depending in any court in this territory, and either of the parties shall die before final judgment, the executor or administrator of such deceased, who was plaintiff, petitioner, or defendant, shall have full power, (in case the cause of action by law survive) to prosecute or defend such action until final judgment: and the defendant is hereby obliged to answer thereto accordingly. And the court before whom such cause may be depending, is hereby empowered and directed to hear and determine the same; and to render judgment for or against such executor or administrator, as the case may require: and if such executor or administrator, having been duly served with a *scire facias*, or citation from the office of the clerk of the court, where such suit is depending, fifteen days before the meeting thereof, shall neglect or refuse to become a party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit; and the executor or administrator, who shall become a party as aforesaid, shall, upon motion to the court where the suit is depending, be entitled to a continuation of the same until the next term, or time of holding the court.

CHAPTER VII.

An Act for the Limitation of Actions, and for avoiding vexatious Law Suits.—*Passed February* 2, 1802.

Time for commencing actions.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That all actions of trespass, *quare clausum fregit*, all actions of trespass, detinue, trover, and replevin, for taking away of goods and chattels; all actions of debt, founded upon any lending, or contract, without specialty, or for arrearages of rent due on a parole demise, and all actions of account, and upon the case, except actions for slander, and except also such actions as concern the trade of merchandise, between merchant and merchant, their factors or agents, shall be commenced within six years next after the cause of such actions shall have accrued, and not after.

SEC. 2. *And be it further enacted,* That all actions of trespass for assault, menace, battery, wounding, and imprisonment, or any of them, shall be commenced and sued within two years next after the cause of such actions shall have accrued, and not after.

SEC. 3. *And be it further enacted*, That every action upon the case for words, shall be commenced and sued within one year next after the words spoke, and not after: *Provided always*, that if any person or persons, who is, are, or shall be entitled to any of the actions herein before specified, is, are, or shall be at the time of any such cause of action, accruing, within the age of twenty-one years, *feme covert*, or insane, then such person or persons may institute such action, so that the same be instituted within such time as is before limited, after his, her, or their coming to, or being of full age, discovert, or of sane memory.

For words.

[SEC. 4. Provided, that no prosecution, had or commenced, upon bonds given by any sheriff or clerk, and his securities should in any wise operate against, or affect the said securities, named and bound in either of the said bonds, unless such prosecution shall be commenced within five years after the date of such bond, and not after, but this section was repealed in December, 1809.]

SEC. 5. *And be it further enacted*, That every action of debt, or covenant for rent or arrearages of rent, founded upon any lease under seal, and every action of debt upon any single or penal bill, for the payment of money only, or upon any obligation, with condition for the payment of money only, or upon any award under the hands and seals of arbitrators, for the payment of money only, shall be commenced and sued within sixteen years after the cause of such action shall have accrued, and not after: but if any payment shall have been made on any such lease, specialty or award, within or after the said period of sixteen years, then an action, instituted on such lease, specialty or award, within sixteen years after such payment, shall be good and effectual in law, and not after: *Provided always*, that the time, during which the person, who is or shall be entitled to any of the actions specified in this section, shall have been within the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed as part of the said limited period of sixteen years.

On lease, specialty, or award.

SEC. 6. *And be it further enacted*, That judgment in any court of record in this territory, may be revived by *scire facias*, or an action of debt may be brought thereon within twenty years next after the date of such judgment, and not after: *Provided*, that the time during which the person, who is or shall be entitled to the benefit of such judgment, shall have been under the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed as part of the said limited period of twenty years.

Revival of judgment.

SEC. 7. *And be it further enacted*, That no person, who now hath, or hereafter may have, any right or title of entry unto any lands, tenements, or hereditaments, shall make an entry therein, but within twenty years next after such right or title shall have accrued, and such person shall be barred from any entry afterward: *Provided always*, that the time during which the person who hath or shall have such right or title of entry, shall have been under the age of twenty-one years, *feme covert*,

Entry of land.

or insane, shall not be taken or computed as part of the same limited period of twenty years.

Persons out of the territory.

SEC. 8. *And be it further enacted*, That if any person or persons against whom there is or shall be any cause of action, as is specified in the preceding sections of this act, is, or are, or shall be out of this territory, at the time of the cause of such action accruing, or any time during which a suit might be sustained on such cause of action, then the person or persons, who is or shall be entitled to such action, shall be at liberty to bring the same against such person or persons, after his, her, or their return into this Territory: and the time of such person's absence shall not be accounted or taken as a part of the time limited by this act.

For lands.

SEC. 9. *And be it further enacted*, That from and after the passage of this act, every real, possessory, ancestral, mixed, or other action, for any lands, tenements, or hereditaments, shall be brought and instituted within thirty years next after the right or title thereto, or cause of such action accrued, and not after: *Provided always*, That the time during which the person who hath, or shall have such right or title, or cause of action, shall have been under the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed part of the said limited period: *Provided also*, that nothing in this act contained, shall be so construed, as in any wise to affect or interfere with the primary disposal of the vacant lands of the United States within this territory.

SEC. 10. *And be it further enacted*, That if in any of the said actions specified in any of the preceding sections of this act, judgment be given for the plaintiff, and the same be reversed by writ of error; or if a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, then the said plaintiff, his or her heirs, executors, or administrators, as the case shall require, may commence a new action within one year after such judgment reversed or given against the plaintiff, and not after.

CHAPTER VIII.

An Act to prevent Frauds and Perjuries.—*Passed November* 18, 1803.

In what cases persons shall not be charged with special promises and agreements, except they are in writing, signed, &c.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, and it is hereby enacted by the authority aforesaid*, That no action shall be brought whereby to charge any executor or administrator upon any special promise, to answer any debt or damage out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person, upon any agreement made upon consideration of marriage; or upon any contract for the sale of lands, tenements, or hereditaments, or the making any lease thereof for a larger term than one year; or upon any agreement which is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized.

NOTE.—The remainder of this act (which is substantially the English statutes of 29 Charles II. Chap. 3. relates to fraudulent conveyances, and will be found under the title of "Deeds and Conveyances."

CHAPTER IX.

An Act to assist Poor persons in their Suits, and to enable Infants to sue by their next Friends.—*Passed March,* 1807.

Whereas it is intended that impartial justice should be had and administered to all citizens of this territory, as well to the poor as to the rich: *And whereas* poor citizens are not of ability or power to sue, according to the laws of this land, for redress of injuries and wrongs to them daily done, as well concerning their persons and their inheritance as other causes:—for remedy thereof, in behalf of the poor persons of this land, not able to sue for their relief after the course of the law:

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That every poor person who shall have cause of action against any person within this territory, shall have, by the discretion of the court, before whom he would sue, writ or writs original, and writs of subpœna, according to the nature of his cause, nothing paying for the same; and that the said court shall direct their clerk to issue the necessary process: shall assign to him counsel learned in the laws, and appoint all other officers requisite and necessary to be had for the speed of the said suit, who shall do their duties without any reward for their counsels, help, and business in the same.

SEC. 2. *Be it further enacted,* That in every case, where persons who are within age may sue, their next friends shall be admitted to sue for them.

CHAPTER X.

An Act regulating Judicial Proceedings in certain cases, and for other purposes.—*Passed December* 18, 1811.

Testatum capias, or judicial attachment.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That on the return of a *capias ad respondendum,* against any person or persons legally liable to be sued in the court from which such writ may issue, that the defendant or defendants is or are not to be found, in addition to the provisions already made by law, the plaintiff or plaintiffs may have a *testatum capias,* or judicial attachment to any other county, which process shall be executed according to its commands, and returned to the court from which the same issued, as in other cases: *Provided*, nothing in this section shall extend to any but such actions as are termed in law local actions.

Clerks of courts to enter in a particular docket, causes in which an issue is to be tried, &c.

SEC. 2. *And be it further enacted*, That before any superior or county court, the clerks of the said courts shall enter in a particular docket all such causes, (and those only) in which an issue is to be tried, or inquiry of damages to be made, or a special verdict, or case agreed, or demurrer, or other matter of law is to be argued, in the same order as they stand in the course of proceeding, setting as near as may be, an equal number of causes to each day, and no cause shall be taken up for trial or hearing, at a day previous to that for which it may be set; and the clerk shall issue subpœnas for witnesses to attend on the days on which the causes stand for trial, and that no witness shall be bound to attend in any cause, unless specially summoned to each term; and it shall be the duty of the clerk to keep a regular subpœna docket, and to issue subpœnas before every term of the court, for all the witnesses, in every cause, that either party may at any time have directed to be summoned.

To issue subpœnas.

Suits founded on writing, whether under seal or not, such writing to be received as evidence of the debt, &c.

SEC. 3. *And be it further enacted*, That whenever any suit shall be commenced in any of the courts of this territory, having jurisdiction thereof, founded on any writing, whether the same be under seal or not, the court before whom the same is depending shall receive such writing as evidence of the debt or duty for which it was given; and it shall not be lawful for the defendant or defendants in any such suit, to deny the execution of such writing, unless it be by plea, supported by the affidavit of the party putting in such plea, which affidavit shall accompany such plea, and be filed therewith, at the time such plea is filed; which affidavit may be made before any justice of the peace, or before the clerk of the court where such suit may be depending.

Suits founded on writing under seal, &c.

SEC. 4. *And be it further enacted*, That whensoever any suit is depending in any of the courts of this territory, founded on any writing, under the seal of the person to be charged therewith, it shall and may be lawful for the defendant or defendants therein, by a special plea to impeach, or go into the consideration of such bond, in the same manner as if the said writing had not been sealed, any law to the contrary notwithstanding.

[Sections five and six relate to bail, and will be found under that title.]

Justices of the peace may issue attachments.

SEC. 7. *And be it further enacted*, That it may be lawful for any justice of the peace, upon complaint to him made by any person or persons, to issue attachments, under the rules and regulations prescribed and required by law, and make the same returnable to any court where the same is cognizable.

[Section the eighth relates to security for costs, and has been inserted under this title, Chapter 1.]

Clerks may require security for costs of complainant in any case.

SEC. 9. *And be it further enacted*, That the clerks of the several courts within this territory shall have power and authority, in any case they may deem proper, to require the plaintiff to give security for costs at the time of the commencement of the suit.

NOTE.—The power here given is limited to the case of non-residents, by the act of 1812, making further regulations in judicial proceedings. See chapter 14 of this title, section 9.

Acts of assembly may be given in evidence.

SEC. 10. *And be it further enacted*, That all private acts of assembly may be given in evidence, without being specially pleaded, and as printed with the general acts of the Legislature.

Papers may be carried from the bar by the jury.

SEC. 11. *And be it further enacted*, That papers read in evidence to the jury on the trial of any cause, though not under seal, may be carried from the bar by the jury.

SEC. 12. *And be it further enacted*, That judgment on confession shall amount to a release of errors.

Interpreters.

SEC. 13. *And be it further enacted*, That interpreters may be sworn truly to interpret, when necessary.

Judgment on confessions.

SEC. 14. *And be it further enacted*, That after issue joined, in an ejectment on the title only, no exception to form or substance shall be taken to the declaration in any court.

SEC. 15. *And be it further enacted*, That the law of costs shall not be interpreted as penal laws.

[Sections 16 and 17 relate to the occasions on which depositions may be taken, and the manner of giving notice. They will be found under the title "Witnesses."]

[Section 18. Obsolete.]

Action of trover against executors and administrators.

SEC. 19. *And be it further enacted*, That the action of trover shall, and is hereby declared to survive for and against executors and administrators, with the same effect, that it might or could have had or maintained against any testator or intestate; any law, usage, or custom to the contrary in any wise notwithstanding.

Repealing clause.

SEC. 20. *And be it further enacted*, That so much of the forty-seventh section of the act, entitled "An Act establishing Superior Courts, and declaring the Powers of the Territorial Judges," as authorizes either of the territorial judges to hold to bail any defendant or defendants in suits in chancery, be, and the same is hereby repealed.*

Executors and administrators not liable.

SEC. 21. *And be it further enacted*, That no executor or administrator shall be liable, out of their individual estate, for not pleading, mispleading, or false pleading in, or to any action whatever, which may be brought against them as such.

Where parties do not pay jail fees as directed herein, jailers by giving legal notice thereof may discharge debtors.

SEC. 22. *And be it further enacted*, That whenever any person may be committed to the jail of any county within this territory, in any civil suit, whether upon original, mesne, or final process, the jailer of such county shall be entitled to demand and receive of the plaintiff or plaintiffs, weekly, all fees that may become due to him, as well as for finding sustenance for such prisoner, and in case of failure on the part of the plaintiff or plaintiffs to pay the same, such jailer shall be authorized to discharge such prisoner out of jail: *Provided*, That the jailer shall have given to such plaintiff or plaintiffs, his or their agent or attorney, ten days previous notice thereof: *Provided also*, that such discharge shall not go to exonerate any defendant, so discharged out of custody, from the debt for which he had been confined, but the same shall be as if the defendant had never been committed to jail.

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* The section here referred to will be found under the title "Judicial Proceedings in Chancery."

[Section the twenty-third. This section, (which provided that no demurrer or rejoinder should be filed in any suit, but that the same should be tried, on the declaration or bill of the plaintiff, and the plea and answer of the defendant, the court directing such issues as might be necessary to have the cause tried on its merits,) was repealed in 1814, by an act, entitled An Act to repeal the several Acts therein named, and for other purposes.]

Judgment to be entered only for principal and interest.

Sec. 24. *And be it further enacted*, That in all actions, which shall be brought upon any penal bond or bonds, for the payment of money, wherein the plaintiff shall recover, judgment shall be entered for no more than the principal, and interest due on said bond.

Partial payments made—Interest first credited.

Sec. 25. *And be it further enacted*, That when partial payments are made on bonds, contracts, or assurances for the payment of money or property that bear interest, agreeably to the laws of this territory, the interest that has accrued shall be first credited, and the balance of such partial payment shall be placed to the payment of the principal.

Debts due by judgment, &c. of courts to bear interest.

Sec. 26. *And be it further enacted*, That all debts, due by the judgment, sentence, or decree of any court, shall hereafter bear interest in the same manner as other debts.

Insolvent debtors.

Sec. 27. *And be it further enacted*, That where any person now is, or hereafter may be in custody, upon original or mesne process, such person shall be entitled to the benefit of the provisions of the act, entitled "An Act concerning Executions, and for the Relief of Insolvent Debtors," in the same manner as is therein provided for persons charged in execution: *Provided nevertheless*, That no plaintiff in any suit against any person, who may have availed himself or herself of the provisions of the aforesaid act, and who shall not have obtained final judgment against such defendant taking the benefit of the aforesaid act, shall receive any part of the proceeds of the estate of such prisoner, in the distribution thereof to the prejudice of any person who may have charged the same prisoner in custody upon execution.

Judges of superior courts, in vacation, may examine answers to bills in chancery.

Sec. 28. *And be it further enacted*, That the judges of the superior courts of law and equity, shall have power in vacation, to examine all answers to bills in chancery, and if any defendant or defendants have been held to bail, any judge, on application, may, and he is hereby authorized to reduce or discharge such bail, so taken as aforesaid.

Sec. 29. Obsolete.

Sec. 30. Relates to the compensation of witnesses, and will be found under the title "Witnesses."

SEC. 31 and 32, Relate to the old road to St. Albans, &c.

SEC. 33. *And be it further enacted*, That all acts and parts of acts, coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER XI.

An Act concerning the Assignment of Bonds, Notes, &c. and for other purposes.—*Passed December* 18, 1812.

Courts to enter judgment.

SEC. 3. *And be it further enacted*, That in all actions founded on any writing ascertaining the plaintiff's demand, or sum sued for, if judgment by default, *nihil dicit*, or by *non sum informatus*, or on demurrer entered therein, the court where the same action shall be pending, shall and may lawfully enter judgment for the debt or demand, and interest thereon, to be calculated by the clerk of such court, up to the time of rendering judgment, without the intervention of a jury, to inquire of the damages, and award execution thereon, as in other cases.

Suits not to be abated.

SEC. 4. *And be it further enacted*, That where any person or persons shall institute any suit in the name of any other person or persons, for his or their own use and benefit, that the death of such person or persons in whose name or names the suit or suits are instituted, shall not abate such suit, but the same shall progress, and be tried, in the same manner as though such suit was actually brought in the name of the person or persons, for whose use the same was instituted.

NOTE.—The other sections of this act will be found under the Title, "Bills of Exchange and Promissory Notes."

CHAPTER XII.

An Act making further Regulations in Judicial Proceedings.—*Passed December* 24, 1812.

Judgment not to be entered against an officer for an escape, unless wilful.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That no judgment shall be entered against any sheriff or other officer, upon any suit brought upon the escape of any debtor in his or their custody, unless the jury who shall try the issue in the cause shall expressly find that such debtor or prisoner did escape, with the consent, or through the negligence of such sheriff or other officer, or officers, or that such prisoner might have been retaken, and the sheriff and his officers neglected to make immediate pursuit.

Bail to defend the suit.

SEC. 2. *And be it further enacted*, That in all actions where bail is required, and where any original process in such cases returned, executed, and if the defendant shall fail to appear according to the commands thereof, the bail in such action may defend the suit, and shall be subject to the same judgment and recovery, as the defendant might or would have been subject to; and in actions of detinue the bail shall be subject to the restitution of the thing sued for, whether animate or inanimate.

or the alternate value according to the judgment of the court, and the bail-piece shall be so altered in such cases as to authorize the bail, in addition to the privileges already allowed him by law, to restore the thing sued for; and if the sheriff in such cases shall not take or return bail as required of him, or the bail returned shall be judged to be insufficient by the court, and the defendant shall fail to appear and give bail, in such case, the sheriff, in addition to the privileges already allowed him by law, shall have the like liberty of defending such action, and shall be subject to the same recovery as is provided above for the bail; and if the sheriff depart this life before judgment be confirmed against him, in such case, the judgment shall be confirmed against his executors or administrators, or in case there be no executors or administrators, or no certificate of probate or administration granted, then judgment may be confirmed against his estate, and a writ of *fieri facias* may in either case be issued in the name of such deceased sheriff as if he were living, and be levied on his estate.

Explanation of a former act.

*SEC. 3. *And be it further enacted*, That the true intent and meaning of the fifth and seventh sections of an act, entitled "An Act concerning Bail in Civil Cases," published in the digest of the laws of this territory, as to the privilege of the bail in surrendering his or their principal is, and shall be construed to be, that the bail shall have liberty at any time before final judgment obtained against him on a *scire facias*, to surrender to the court from which such process issued, or to the sheriff returning such process during the sitting of such court, or to the sheriff in the recess of such court, the principal in discharge of himself: and the bail in any action shall have a right to plead in bar to any *scire facias* against him, her, or them, the death of the principal at any time previous thereto; and if on the trial of any such issue, it shall be found that the principal is not living, judgment shall be given in favour of the defendant to such *scire facias*.

How to proceed in case of the division of a county.

SEC. 4. *And be it further enacted*, That in all cases where, by the division of any county, new counties have been established, and in the establishment of all future counties, all unfinished business in the courts of such county previous to such division, which would be properly cognizable in the courts of such newly established county, whether of suits, probate of matters, or other business, shall be transferred to the proper court of such new counties, to be there acted on and determined as if they had therein originated.

NOTE.—Sec. 5. Relates to the jurisdiction of the county courts, and will be found under the title "Courts Inferior."

Section the sixth provided that the justices of the quorum should have, and that the judges of the superior courts should not have power to issue writs of *certiorari* to justices of the peace, but this section was repealed in January, 1814.

Section seventh relates to executions, and will be found under that title.

Section eighth relates to the legal character of the United States land certificates, and will be met with under the title "Deeds and Conveyances," page 248.

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* See in the present Digest, title "Bail."

CHAPTER XIII.

An Act to amend an Act, entitled "An Act to regulate the several Courts in this Territory, and create a Supreme Court of Errors and Appeals."*—*Passed December 22, 1814.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That so much of the fifth section of the said act as prevents an allowance of a writ of error, unless the judge granting the same shall be of opinion, from the inspection of the record of the judgment or decree, that there is good cause to reconsider the same, be, and the same is hereby repealed. **Repealing clause.**

SEC. 2. *And be it further enacted,* That the security required by the fifth section of the act, entitled "An Act to regulate the several Courts in this Territory, and to create a Superior Court of Errors and Appeals," may be given in the clerk's office, and be approved by the clerk of the court to whom said writ of error is directed, and no writ of error shall operate as a *supersedeas* until security be given with such clerk, or given according to the provisions of the act above recited, and the said clerk shall send an attested copy of the bond to the said supreme court, with the transcript of the record. **Security may be given in the clerk's office**

SEC. 3. *And be it further enacted,* That when any judgment shall be affirmed on a writ of error, in the said supreme court of errors and appeals, the said court shall render judgment against the principal and security in said bond.

CHAPTER XIV.

Extracts from an Act passed December 24, 1812, entitled "An Act making further Regulations in Judicial Proceedings."

SEC. 9. *And be it further enacted,* That the ninth section of the act passed the eighteenth day of December, one thousand eight hundred and eleven, entitled "An Act regulating Judicial Proceedings in certain cases, and for other purposes,"† be, and the same is hereby repealed: *Provided nevertheless,* That any clerk may, and he is hereby authorized to require security for costs of non-residents before he issues any writ.

SEC. 10. *And be it further enacted,* That the courts of equity shall hereafter have jurisdiction in all cases of gambling consideration, so far as to sustain a bill for discovery, or to enjoin judgments at law.

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* The act to which this is an amendment will be found under the title of "Courts Superior."

† See Chapter 10, of this Title.

CHAPTER XV.

An Act additional to an Act, entitled "An Act making further Regulations in Judicial Proceedings."—*Passed December* 23, 1815.

Respecting actions of ejectment.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That in all actions of ejectment hereafter tried in any of the courts of this territory, if it shall be made appear to the satisfaction of the jury trying such cause, that the defendant has a crop then planted or growing upon the premises in question, shall, if they find the defendant guilty of the trespass and ejectment complained of, assess at the same time such rent as shall be reasonable and just for the plaintiff to have and receive for the use of said premises during such time, as shall be in their opinion sufficient to enable the defendant to gather and secure his crop from off said premises: and no writ of *Habere facias possessionum* shall issue upon any such verdict until the expiration of the time determined by the jury, if the defendant in such action shall enter into bond at any time during the term of the court before whom such cause is tried, with sufficient security, to be approved of by the said court, in the penalty of double the amount of the rent assessed by the jury, payable to the plaintiff, conditioned for the payment of the rent so assessed, at the expiration of the time fixed by the jury, for the defendant to hold possession of the said premises.

Sec. 2. *And be it further enacted*, That all bonds taken in virtue of this act shall be filed in the clerk's office of the proper court, and shall have the force and effect of a judgment; and if the same be not discharged according to the condition thereof, execution shall issue thereon against the principal and his security, for the sum therein mentioned, as upon other judgments in said court.

CHAPTER XVI.

An Act to regulate Judicial Proceedings.—*Passed December* 27, 1815.

To regulate judicial proceedings.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That it shall be the duty of the clerks of the superior courts in this territory to keep a trial docket, and to assign not less than fifteen causes ready for trial each day of the term, commencing on the first day and continuing until the docket be gone through. And it shall not be lawful to take up any cause out of the order in which it shall stand upon the trial docket unless by consent of parties.

Sec. 2. *And be it further enacted*, That the bond required by law to be given by the plaintiff in error by the fifth section of the act, entitled "An Act to regulate the several Courts of this Territory, and to create a Supreme Court of Errors and Appeals," passed the twentieth day of January, eighteen hundred and fourteen, shall in all cases be on condition that such plaintiff shall prosecute his or their appeal to effect, and to pay and satisfy such judgment as shall be rendered on such appeal, and in case of dismission or discontinuance of the cause, the supreme court shall render judgment against the principal and security in the bond.

Sec. 3. *And be it further enacted*, That the clerks of the several courts of this territory shall endorse on all executions by them issued, the several items contained in the bill of costs in intelligible words and figures.

Sec. 4. *And be it further enacted*, That the fee of attorneys in each cause in the supreme court shall be ten dollars; and hereafter the party prevailing in any suit which may be brought in any of the courts in this territory, shall be considered as entitled to the tax fee allowed the attorney, and recover the same against the party cast in the suit.

Sec. 5. *And be it further enacted*, That no writ of error shall issue to reverse or set aside any judgment or decree, which may be rendered in any of the courts of this territory, after the expiration of two years from the rendition of such judgment or decree.

CHAPTER XVII.

An Act concerning Writs of Error.—*Passed December* 12, 1816.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That when either plaintiff or defendant, in any matter or cause determined in any of the superior courts of this territory, shall wish to have the judgment rendered in said courts, examined in the supreme court of errors and appeals of this territory, and shall in person, or by his attorney, apply to the clerk of the court in which the judgment shall have been rendered, it shall be the duty of the clerk of the said court to issue a writ of error, returnable to the first day of the next term of the said supreme court; and also to issue a citation, which shall be served upon the opposite party or his attorney, by the proper officer of the court, at least fifteen days previously to the commencement of the next term of the supreme court; which citation shall be returned to the office of said clerk, whenever served, whether in vacation or term time, and shall be sealed up with the copy of the record in the cause and the assignment of errors, and be delivered to the party applying for the writ of error, or his attorney, to be by him or them returned to the first day of the next term of the said supreme court; and in case the copy of the record in the cause below, should not be delivered to the clerk of the said supreme court on or before the third day of the term of the said supreme court, to which the writ of error shall be returnable, it shall be lawful for the said supreme court, on motion of the defendant in

Clk. of court below may issue writs of error and citation, and send all up with bond and transcript to supreme court.

If not filed in three first days of term, may be dismissed, but may be reinstated on showing cause.

error or his attorney, on producing a copy of the citation served upon the defendant, to dismiss the cause at the costs of the plaintiff in error; but the cause may be reinstated on the docket at any time during the term to which the writ shall be made returnable, upon showing sufficient cause to the said supreme court.

Clerk to docket causes in order of time, to be tried first term.

SEC. 2. *And be it further enacted*, That it shall be the duty of the clerk of the said supreme court to enter on a docket to be kept for that purpose, a list of all causes brought by writ of error into the said court according to priority; and the errors assigned shall be tried by the said supreme court at the return term, unless for sufficient reason the cause should be continued.

Judgments of supreme court to be certified to court below, whose clerk to issue execution.

Whenever a final judgment shall be rendered by the said supreme court in any cause, it shall be the duty of the clerk of the said supreme court to certify the judgment of the said court, to the clerk of the court from which the cause came, together with a bill of the costs accruing in the said supreme court; and it shall be the duty of the clerk below, immediately upon the receipt of the said certificate, to issue execution if judgment be rendered for the plaintiff in the original cause, for all the money, together with all the costs of the suit in the court below, and supreme court, which by the judgment of the said supreme court may be due from the said defendant to the said plaintiff; but if judgment be rendered for the defendant in the original cause, then against the plaintiff in the original cause, for all the said costs of suit, returnable to the first day of the next term of the said court below.

Clerk of court below to return costs to clerk of supreme court.

When writ of error filed and security given, it shall be a supersedeas.

And it shall be the duty of the clerk of the court below to transmit to the clerk of the said supreme court upon the return of the said execution satisfied, all costs which may have accrued in the same cause in the said supreme court. Whenever a writ of error shall be filed in the clerk's office of any of the superior courts of this territory, in any cause or matter finally determined in the said courts, and bond and security be given according to law, it shall operate as a supersedeas.

CHAPTER XVIII.

An Act regulating Judicial Proceedings in certain real and possessory Actions, and for other purposes.—*Passed December* 13, 1816.

In certain real actions, improvements to be paid for.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That in all actions real or possessory, hereafter brought or prosecuted in any court in this territory, for any lands, tenements, or hereditaments, against any person or persons, body politic or corporate, deriving title to such lands, tenements, or hereditaments, by, from, or under the United States, or by, from, or under any Spanish grant, or order of survey recognized or confirmed by the United States' board of commissioners east or west of Pearl river, the person or persons prosecuting any such action against any person or persons, body politic or corporate, claiming and deriving title under the United States, or by, from, or under any Spanish grant, or order of survey recognized and confirmed by either of the said boards of commissioners, and recovering judgment for any lands, tenements, and hereditaments, from any person or persons, body politic or corporate, having derived title by, from, under, or through the United States, or any Spanish grant, or order of survey recognized and confirmed as aforesaid, the person or persons so obtaining judgment, shall not have any writ of possession or seizin, nor obtain possession or seizin of such lands, tenements, or hereditaments, until he, she, or they shall have first paid to the person or persons, body politic or corporate, possessing the title thereto, derived from or under the United States, or by, from, or under any Spanish grant, or order of survey recognized and confirmed as aforesaid, the full value of all improvements made thereon, as the same shall be estimated, valued, and ascertained, on oath, by five appraisers, which appraisers shall be, by rule for that purpose appointed by the court in which such judgment shall have been obtained, unless the parties shall agree on the value of such improvements, or agree on and submit to appraisers to value the same: *Provided always*, That this act shall not extend and be so construed, as to compel any plaintiff or plaintiffs in any of the said actions to pay for any improvement or improvements, not needful and necessary, which may be made on the premises, after the service of the writ or declaration in ejectment.

Improvements to be valued by appraisers.

SEC. 2. *And be it further enacted*, That if any person or persons, body politic or corporate, deriving title to any lands, tenements, or hereditaments, by, from, or under the United States, or under any Spanish grant, or order of survey recognized and confirmed as aforesaid, be disseized, ousted, or turned out of possession of said lands, tenements, or hereditaments, by any person or persons claiming or pretending to claim title to such lands, tenements, or hereditaments, and on a trial in due course of law, a judgment should be rendered in favour of the title of said person or persons, ousting, dispossessing, or disseizing the person or persons, body politic or corporate, deriving title by or under the United States, or by order of any Spanish grant, or order of survey recognized and confirmed as aforesaid, it shall and may be lawful for the person or persons, body politic or corporate, so disseized, ousted, or turned out of possession, to recover from the person or persons so ousting, dispossessing, or disseizing, the full value of all improvements made on said lands, tenements, or hereditaments, together with double damages and costs, in any court having jurisdiction of the same.

Damages in case of ousted or other dispossession.

Value of improvements.

CHAPTER XIX.

An Act to amend an Act, entitled "An Act for the Limitation of Actions, and for avoiding vexatious Law Suits."—*Passed December 13, 1816.*

Limitation of certain real actions.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That no person or persons, body politic or corporate, who now have, or shall, or may hereafter have any estate, right, title, claim, or demand, by virtue of any title which has not been confirmed by either of the boards of commissioners of the United States, appointed for settling and adjusting land claims in the Mississippi territory, and not recognized or confirmed by any act of congress, in or to any lands, tenements, or hereditaments in this territory, shall after the expiration of three years from and after the passage of this act, have, prosecute, or maintain any action or suit at law for the recovery thereof, in any court in this territory: *Provided,* That this act shall not extend to claims in that part of this territory formerly a part of West Florida, which have been registered and not acted on by congress: *Provided also,* that if any person or persons who is, are, or shall be entitled to sue or prosecute such suit or action, or who hath, have, or shall have such right or title, shall be within the age of twenty-one years, *feme covert,* or insane, within the time limited by this act, then such person or persons, his, her, or their heirs or assigns, shall and may, at any time within three years next after his, her, or their coming to full age, of sound mind, or *discovert,* bring, sue, and prosecute such suit or action, and at no time thereafter.

Proviso.

Proviso.

Limitation on open accounts.

SEC. 2. *And be it further enacted,* That no action shall hereafter be brought to recover any money due by open account in cases hereafter contracted, after the expiration of three years from the accruing of the cause of action, or after the passage of this act in cases heretofore contracted: *Provided,* that nothing in this act shall apply to the trade of merchandise between merchant and merchant, their factors or agents.

Proviso.

Proviso for infants, &c.

SEC. 3. *And be it further enacted,* That any person or persons that is or shall be entitled to any of the personal actions enumerated and mentioned in this act, and in the act for the limitation of actions, and for avoiding vexatious law suits, be, or shall be, at the time of any such cause of action given or accrued, fallen or come, within the age of twenty-one years, *feme covert, non compos mentis,* that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming to or being of full age, *discovert,* or of sane memory, as other persons having no such impediment should have done.

Claims barred not to be revived.

SEC. 4. *And be it further enacted,* That nothing in this act shall operate so as to revive any claim or demand, already barred by the provisions of any law or statute of limitation of this territory, and when any such claim or demand so barred, is, or shall be sued for, a plea or pleas to that effect shall be sustained in the same manner as if this act had not passed.

CHAPTER XX.

An Act concerning Writs of Error.—*Passed February* 10, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That whenever a writ of error shall have issued from the clerk's office of any of the superior courts of this territory, it shall be the duty of the clerk of the court from which it shall have issued, to give the defendant in error, or to his attorney on application, a certificate stating that a writ of error has issued; and it shall be the duty of the general court, on motion of the said defendant, and on his producing the said certificate, to dismiss any cause in which the transcript of the record shall not have been returned on or before the third day of the term to which the writ shall have been made returnable.

Duty of clerk to give certificate.

Courts to dismiss a cause in which the transcript shall not be returned.

SEC. 2. *And be it further enacted*, That whenever any cause shall be dismissed for want of a return of the transcript of the record, and the judgment below shall have been superseded, it shall be the duty of said general court to affirm the judgment of the court below, with damages, interest, and costs, unless the plaintiff in error, or some other person, shall make affidavit that the transcript of the record could not be procured from the clerk of the court below.

Affirm the judgment of the court below with damages.

SEC. 3. *And be it further enacted*, That from and after the passage of this act, no writ of error shall issue to reverse or set aside any judgment or decree which may be rendered in any of the courts of this territory, after the expiration of twelve months from the rendition of such judgment or decree, any law to the contrary notwithstanding.

No writ of error granted after twelve months.

CHAPTER XXI.

An Act concerning the Style of Writs.—*Passed February* 12, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That all writs hereafter issued from any of the courts of this territory, shall run in the name of the Alabama Territory, and shall bear teste in the name of, and be signed by the clerk of the court from which they may be issued.

SEC. 2. *And be it further enacted*, That in all cases respecting the rights, interest, and duties of the territory or its officers, whenever the word Mississippi occurs, or is required to be used, it shall be supplied by the word "Alabama."

CHAPTER XXII.

An Act to authorize the change of Venue in Real Actions.—*Passed February* 13, 1818.

Change of venue to any adjacent county.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That hereafter it shall and may be lawful for the several courts within this territory, when any real action may be instituted, or pending in such courts, to order the change of venue in such action to any adjacent county, on the party wishing such change making affidavit, that he, she, or they, verily believe that justice cannot be done in the county where such suit may be pending: *Provided,* That the party opposed to such change of venue, shall have the right to take the testimony of aged or infirm witnesses, in all cases where a change of venue may be prayed, by *dedimus potestatum,* to be directed to any justice of the quorum, or of the peace, in the county from whence the said venue may be changed; the party wishing such *dedimus* previously making an application for that purpose, to the judge who may preside in the judicial district where such suit may be pending, and giving the opposite party sufficient notice of the time and place of taking such testimony, which testimony, in form aforesaid taken, together with the *dedimus,* shall be sealed up by the person by whom the said testimony may be taken, and be directed to the clerk of the court to which the venue may be changed, and shall be read in evidence in the case in which it may be taken, subject to such restrictions and formalities as are now prescribed by law.

Party opposed to take testimony of aged and infirm persons.

Writ of *habere facias possessionem* to issue.

Sec. 2. *And be it further enacted,* That when the venue has been changed in any real action, and judgment had and rendered in favour of the plaintiff, it may be lawful, and it is hereby required, that the clerk of the court where such judgment shall be rendered, shall issue the writ of *habere facias possessionem,* in favour of the plaintiff, directed to the sheriff of the county where the action originated, any law, usage, or custom, to the contrary notwithstanding.

CHAPTER XXIII.

An Act supplemental to the Laws now governing Judicial Proceedings.—*Passed November* 21, 1818.

[Sections 1, 2, 3, and 4, under title "Executions."]

Interest.

Sec. 5. *And be it further enacted,* That all judgments shall hereafter bear interest from their date, at the rate established by law for contracts specifying no rates.

Aadditional justices of quorum.

Sec. 6. *And be it further enacted,* That there shall be appointed in each county, two justices of the quorum, in addition to the number now authorized and required by law: *Provided,* that any three justices of the quorum shall be authorized to hold a county or orphans' court.

Writ valid served in any other county.

SEC. 7. *And be it further enacted*, That when a writ or other process shall issue to the sheriff of the county where the defendant resides, service of such writ or other process shall be good and valid, if the said sheriff shall execute the said writ or other process in any adjacent county, or in lands to which the Indian title has not been extinguished, and return the same to the court from which the writ or other process issued.

Suing in any other county, by party making oath.

SEC. 8. *And be it further enacted*, That any person or persons may be sued in the county in which he, she, or they may be found, without regard to his, her, or their residence, if oath be made before the clerk issuing the writ, or any justice of the peace, that such person or persons hath or have gone from the county of his, her, or their residence, for the purpose of avoiding service of process in their proper county.

Witnesses.

SEC. 9. *And be it further enacted*, That when a witness whose testimony may be material in any action or suit pending before any of the justices of the quorum or of the peace of this territory, resides at such a distance from the county wherein such suit may originate, as to render the obtaining of his testimony doubtful, according to the ordinary mode of procedure; or shall reside without the limits of the Alabama territory, it shall and may be lawful for such justices of the quorum or of the peace, before whom such suit may be pending, on the affidavit of the party desirous of availing himself of the testimony of such absent witness, stating the materiality of the testimony, to grant and to issue a *dedimus potestatum*, to be directed to one or more persons resident in the county where such absent witness resides, requiring him or them to execute such dedimus; which dedimus shall be subject to the same regulations and be governed by the same restrictions and provisions as are already provided by law for cases originating in the superior courts of law of this territory, and to stay all proceedings pending before him or them, until a sufficient length of time to execute such dedimus shall have elapsed, any law or provision to the contrary notwithstanding.

Dedimus.

Written notice valid.

SEC. 10. *And be it further enacted*, That in all cases pending before any of the courts of record in this territory, written notice to the attorney of record of litigant parties in any suit or suits pending as aforesaid, shall be as valid and legal, to all intents and purposes, as if served on the party in person.

CHAPTER XXIV.

An Act to egulate the Proceedings in the Courts of Law and Equity in this State.—*Passed December* 14, 1819.

NOTE.—The preceding Sections of this Act will be found under the Title of "Courts, Superior," Chapter 6.

Circuit courts, how adjourned in absence of the judge.

SEC. 4. *Be it further enacted*, That where any circuit judge shall fail to attend on the first day of any term, the business therof shall stand adjourned until the second day; and if the judge shall fail to attend on the second day, the business shall stand adjourned until the third day; and if the judge does not attend before the hour of three o'clock in the evening of the third day, it shall be the duty of the sheriff to adjourn all suits, causes, and prosecutions therein depending, to the next succeeding term of the circuit court; and the clerk of such court shall enter on his docket a continuance of all such suits and causes, and shall bind over all witnesses on behalf of the state, to appear at the next term of the said court, unless previously bound over: *Provided*, That nothing herein contained shall be so construed as to prevent the parties from making up their pleadings on the appearance causes.

When the sheriff shall adjourn suits, &c. Clerk to continue suits and causes on the docket to the next term, and bind over witnesses.

Duty of the clerk or attorney issuing process. Sheriff's duty in executing. Forfeiture for neglect.

SEC. 5. *And be it further enacted*, That the clerk or attorney issuing process, shall mark thereon the day on which such process issued; and the sheriff, or other officer receiving the same, in order to execute, shall in like manner mark on each process the day on which he received it; and every clerk, attorney, sheriff, or other officer, neglecting so to do, shall forfeit and pay the sum of one hundred dollars, to be recovered by action of debt in any court of record having cognizance thereof, by any person who will sue for the same, with costs.

Writs, &c. when returnable, and when executed. Process not duly returnable or executed, void. Proviso. Warrants, &c. in behalf of the state, returnable to any day of the court. Proceedings in criminal cases as heretofore under territorial government.

SEC. 6. *And be it enacted*, That all writs and other process, (except subpœnas for witnesses, returnable immediately,) shall be returned the first day of the term, to which the same shall be returnable; and shall be executed at least five days before the beginning of such term; and if any original or *mesne* process shall be taken out, within five days before the beginning of any term, such process shall be made returnable to the term next succeeding that, which shall commence within five days after taking out such process, and not otherwise: and all process made returnable at any other term, or executed at any other time, or in any other manner, than by this act is directed; shall be adjudged void, upon the plea of the defendant: *Provided nevertheless*, That nothing herein contained shall be construed to invalidate or vacate any process, warrant, or precept, to be issued by any of the judges of the said court, or any justice of the peace, or clerk of any court, on any original prosecution in behalf of the state; but, that the same may be issued at any time, and made returnable to any day of the term: and the like proceedings on criminal suits and prosecutions, shall be agreeable to the practice heretofore in use in the territorial government, except where the same is, or may be otherwise directed, by this or some other act.

Rules and regulations in the courts as to plaintiff or attorney. Shall file declaration within the first three days of the term. Proviso. Judge may grant longer time—plaintiff paying costs.

SEC. 7. *And be it further enacted*, That the following rules and regulations shall be observed in the said courts until otherwise directed by law, viz.: That every plaintiff or his attorney when employed in any suit, in any of the circuit courts of this state, shall file his declaration in the clerk's office, any time within the first three days of the term, to which the writ is made returnable; and on failure thereof such suit shall be dismissed by the court, at the cost of the plaintiff: *Provided nevertheless*, That the judge on good cause shown, may grant a longer time, which costs being paid by the plaintiff to the clerk of said court, he or they, paying such cost in consequence of a declaration not being filed in due time, as aforesaid, may warrant such attorney for all such cost paid by him as aforesaid, and the receipt of the clerk shall, and may be evidence in support of such claim, and the justice before whom such warrant shall be tried, may give judgment and issue execution thereon; and such attorney shall be further liable to the action of such plaintiff, for such damages as he or they may have sustained, in consequence of such declaration not having been filed as aforesaid. The defendant shall appear and plead or demur, within the three first days after the time allowed for filing declaration, otherwise the plaintiff may have judgment by default, which in actions of debt, shall be final, unless where damages are suggested on the roll; and in that case, and in all others not herein specially provided for, when the recovery shall be in damages, a writ of inquiry shall be executed at the next succeeding term: *Provided*, That where the nature of the actions require special pleading, the time for pleading may be enlarged, where the defendant pleads specially, the plaintiff shall reply or demur, within three days after the time allowed for filing the declaration, or a *non pros.* may be entered by the defendant; and if the plaintiff replies, and in his replication tenders an issue, the defendant shall join issue or demur in three days, otherwise the plaintiff may have judgment; and where the defendant rejoins to the plaintiff's replication, he shall file his rejoinder within three days, or judgment shall go against him, unless the term for pleading shall be enlarged as aforesaid, and the same time shall be given, and rules observed, through the whole course of the proceedings: *Provided*, That in every case the pleadings shall be made up during the term to which the process is returned, unless the time be extended by the consent of parties, their attorneys, or by direction of the court, where a special verdict shall be found, a case agreed, a demurrer filed, or a bill of exceptions to the evidence tendered, the court may, for a good cause shown, continue the same until the next term, for argument. For the better preservation of the records of the courts, where any cause is finally determined, the clerk of each court shall enter all the proceedings therein, in a book bound, and make an entire and perfect record thereof. All jury causes shall be first tried; all motions in arrest of judgment, shall be argued within the three last days of the term, in which the issue shall be tried; the defendant's attorney first serving the plaintiff's attorney, with a copy of the reasons in arrest of judgment, the day immediately following that on which such motion shall be made: arguments on writs of error, special verdicts, cases agreed, demurrers, petitions for legacies, and distributions of intestate estates shall be heard during the four last days of the term.

Attorney liable for such costs.

Attorney liable to plaintiff in damage for not filing declaration, when defendant shall appear and plead or demur.

Plaintiff may have judgment on default thereof except in damages.

Proviso.

Where the time of pleading may be enlarged.

Proviso.

Clerk to record proceedings thereon.

Order of proceedings.

When a plea in abatement, shall be pleaded, and upon argument the same shall be adjudged insufficient, the plaintiff shall recover against the defendant full costs to the time of overruling such plea, including the costs of court; and a defendant in any action may plead as many several matters as may be necessary for his defence, so that he be not admitted to plead and demur to the whole.

Plea of abatement.

CHAPTER XXV.

An Act to regulate the Proceedings in Suits at Common Law.—*Passed December 20, 1820.*

Petition.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That when any person or persons holding a bond or note for the direct payment of money, may desire to bring suit thereon, he or they may do so, by filing such bond or note with the clerk of any court having jurisdiction thereof, with a petition purporting as follows: "State of Alabama, Circuit or County, ss. A. B. plaintiff states that he holds a bond or note (as the case may be) on the defendant C. D. in substance as followeth, (here insert a copy of the bond or note) yet the said debt remains unpaid, wherefore he prays judgment for his debt, and damages for the detention of the same, together with his costs, &c. A. B."

Endorsement to be recited.

Sec. 2. *And be it further enacted,* That if such bond or note is held by an assignee or endorsee, then, after reciting the bond or note, "on which is the following assignment or endorsement, (recite the assignment or endorsement) whereby the plaintiff hath become the proprietor thereof, of which the defendant hath had due notice."

Copy of petition to be annexed to summons.

Sec. 3. *And be it further enacted,* That a copy of the petition with a summons annexed thereto, requiring the defendant to appear and answer the demand on the first day of the next succeeding term, which shall be issued by the clerk, and served by the sheriff by delivering a copy of the petition and summons to the defendant, and each of the defendants, if there be more than one.

Judgment at first term.

Sec. 4. *And be it further enacted,* That the sheriff in his return shall note the day on which it shall have been executed, and whenever it shall appear therefrom that it has been executed five days or more before the return day, judgment may be rendered the first term, subject however to be continued for cause shown; but if the process be not executed five days before the return day thereof, a continuance shall be entered, unless a trial shall be had by consent of parties.

To be continued for cause.

Petitions in lieu of declarations.

Sec. 5. *And be it further enacted,* That the petition shall stand in the place of a declaration, and the defendant may appear and plead thereto as in an action of debt, and issue be joined accordingly; which issue shall stand over to, and be tried at, the next term of the court in which such suit may be instituted, unless a trial is had at the first term by consent of the parties, but if the defendant does not appear and plead, judgment may be taken by default.

Judgment by default.

Judgment return term, unless plea filed.

Sec. 6. *And be it further enacted,* That it shall be lawful in all actions of debt, assumpsit, and covenant, to take judgment at the return term thereof, but the defendant may upon filing a plea to the merits, have the suit continued.

Judgment lien.

Sec. 7. *And be it further enacted,* That in all cases when judgment passes against the defendant at the first term, such judgment from the date thereof shall be a lien on the estate of the defendant; but execution shall not issue thereon, until the expiration of sixty days after the end of said term.

Judgment may be stayed.

SEC. 8. *And be it further enacted*, That if the defendant shall, before execution issues on such judgment, tender to the clerk of the court where the judgment was rendered good and sufficient security, to be approved of by the said clerk, for the amount of the judgment, interest, and costs of suit, the clerk shall take a recognizance to the effect following:—"Whereas A. B. plaintiff at the ——— term of ——— court, obtained a judgment against C. D. defendant, for the sum of —— debt —— interest or damage (as the case may be) and —— costs of suit: or if the judgment be in damages therefor, the sum of —— damages and —— costs of suit; and whereas the said C. D. hath tendered E. F. to be bound with him to the said A. B. for the amount of the said judgment, interest, and costs, I, G. H. clerk of the said court, do hereby accept for the said A. B. the following recognizances, to wit: We the said C. D. and E. F. hereby acknowledge ourselves to be bound to the said A. B. in the said sum of —— debt —— interest or damage and —— costs of suit; or —— damages and —— costs of suit (as the case may be) and the further sum of —— for taking this recognizance, to be paid to the said A. B. six months after the date hereof, with interest thereon from the date of said judgment; and if we shall delay payment thereof for the space of sixty days after the said term of six months, then execution is to issue against our estates or bodies, as the said A. B. may direct, for the amount of this recognizance with interest as aforesaid. Signed, sealed, and delivered in the presence of the said G. H. clerk of —— C. D. l. s. E. F. l. s." Which recognizance shall have the force and effect of a judgment, and execution may issue thereon as upon other judgments. But after the execution of the recognizance as aforesaid, the lien created by the judgment shall cease.

Recognizance.

Lien to cease.

Recognizance may be satisfied.

SEC. 9. *And be it further enacted*, That the said recognizance may be satisfied and discharged by the payment of the amount thereof to the clerk of said court, at any time before execution issues thereon, and by paying one half per centum thereon to said clerk for his trouble in collecting and securing the money. And upon the payment thereof, the clerk shall in the presence of the said defendant, his agent or attorney, enter on said recognizance satisfaction in full, and carefully file and preserve the same among the papers of the suit. And he shall also execute to the defendant a receipt in full upon such payment.

Penalty of clerks for failing to pay over money.

SEC. 10. *And be it further enacted*, That if any clerk shall fail to pay over to the plaintiff money received as aforesaid when required, he shall pay the same with six per cent. per month thereon, to be recovered by motion, upon ten days notice thereof before said court, with such costs as may be awarded against him.

Remedial.

SEC. 11. *And be it further enacted*, That nothing in this act contained, shall be so construed as to take away any remedy or defence heretofore allowed by law, nor shall this act be otherwise construed than as a remedial statute.

Clerk's fees. SEC. 12. *And be it further enacted*, That the clerk shall be allowed for issuing a summons and copying the petition fifty cents, and for taking recognizance under this act, fifty cents, and for receiving and paying over money to the plaintiff, one half per centum thereon, to be taxed in the bill of costs.

CHAPTER XXVI.

An Act concerning Writs of Error.—*Passed December*, 1820.

NOTE.—The Legislative Provisions, with regard to appeals and writs of error, have been very numerous: and as it does not appear that they have been expressly repealed, (though many, no doubt, have been repealed by implication) it has been thought most advisable to retain the whole in the several acts to which they originally belonged, although those acts, on account of their different general tenor, fall under different titles. The first superior court which was established in what is now the State of Alabama, was the court of Washington District, comprehending all that part of the Mississippi Territory which lay between Pearl river and Georgia.

An Act of the Congress of the United States, passed on the 27th day of March, 1804, provided for the appointment of an additional Judge for the said Territory, who was to hold and exercise within the district of Washington, the jurisdiction before that time possessed and exercised by the superior court of the territory, to the exclusion of the original jurisdiction of the said superior court within the same; but the said superior court was authorized, when sitting for the district of Adams, to issue writs of error to the superior court of Washington District, and upon a reversal of the judgment of the court of Washington District, to render such judgment as the said court ought to have rendered, except when the reversal should be in favour of the plaintiff in the original suit, and the debt or damages to be ascertained were uncertain; in which case the cause was to be remanded, in order to a final determination.

And it was further enacted, That when any person, not being an executor or administrator, should apply for a writ of error, such writ of error should be no stay of proceedings, unless the plaintiff in error gave security to prosecute his writ to effect, and pay the condemnation money and all costs, or otherwise the judgment in error, if he should fail to make his plea good.

The provisions of the Territorial Legislature relating to this subject, were enacted and amended from time to time. The act of 1807, establishing superior courts, defined the duty of the Clerk on appeals and writs of error, as will be seen under the title "Superior Courts," Chap. 1, Sec. 39, &c.

"An Act concerning Writs of Error, and for other purposes," passed December 18, 1812, provides "that on writs of error, if the judgment, sentence, or decree be affirmed in whole, the plaintiff in error shall pay the defendant in error ten per cent. damages on the sum due, with lawful interest, from the day of rendering the judgment so affirmed, besides the costs of the original suit and writ of error." See title "Justices of the Peace."

An Act passed in January, 1814, points out the manner in which writs of error shall be granted, and will be found under title "Superior Courts," Chap. 4.

An Act passed in December, 1814, dispenses with an allowance by a Judge, and authorizes security to be given in the clerk's office, and makes it the duty of the supreme court to enter up judgment against both principal and security. This act is under title "Judicial Proceedings," Chap. 13

An Act of December, 1815, changes the condition of the bond, and provides that a writ of error shall not issue after the expiration of two years. See the present title, Chap. 16, Sec. 5.

An Act of December, 1816, authorizes the clerk below to issue writs of error. See the same title, chap. 17.

Another Act concerning writs of error, passed in 1818, will be found under this title, Chapter 20.

The mode of appealing from a circuit to the supreme court, and of obtaining writs of error, will be found under title "Superior Courts," Chapter 6, Section 16 and 20.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall be the duty of the clerks of the circuit courts in this state respectively, on the application of the party against whom any final judgment shall have been rendered, or on the application of the attorney of the said party, to issue a writ of error returnable to the first day of the next term of the supreme court, and also to issue a citation which shall be served upon the opposite party or his attorney, by the proper officer of the court, at least ten days previous to the commencement of the next term of the supreme court, which citation shall be returned to the office of the clerk from which it issued, whenever served, whether in vacation or term time, and shall, together with a transcript of the record in the cause, be delivered to the party applying for the writ of error, or his, her, or their attorney, to be by him, or her, or them returned to the first day of the next term of the supreme court, and in case the transcript of the record in the cause below, should not be delivered to the clerk of the supreme court, on or before the third day of the term to which the writ of error shall be returnable, it shall be lawful for the supreme court at that term, or at any term thereafter, on motion of the defendant in error or his attorney, and on producing a copy of the citation served upon the defendant, certified by the sheriff, or on producing a certificate from the clerk of the court from which the writ of error issued, showing the time at which it issued, and amount for which judgment was rendered, and at what term of the court below, to affirm the judgment of the circuit court with costs of suit.

Writ of error, how issued and returned.

SEC. 2. *And be it further enacted,* That whenever a final judgment shall be rendered by the supreme court in any cause, it shall be the duty of the clerk of the supreme court to certify the judgment of the said court to the clerk of the court from which the cause came, together with a bill of the costs accruing in the supreme court; and it shall be the duty of the clerk of the court below, immediately on the receipt of the said certificate, to issue execution, if judgment be rendered for the plaintiff in the original cause, for all the money, together with all the costs of the suit in the court below, and supreme court, which by the judgment of the supreme court may be due from the defendant to the plaintiff, or to issue such an execution as may be directed by the supreme court; but if judgment be rendered for the defendant in the original cause, then against the plaintiff in the original cause, for all the said costs of suit, or such other execution as may be directed by the supreme court, returnable to the next term of the court below. And it shall be the duty of the clerk of the court below to transmit to the clerk of the supreme court, upon the return of the said execution satisfied, all the costs which may have accrued in the same cause in the supreme court.

Clerk's duty.

SEC. 3. *And be it further enacted,* That no judgment of the circuit court in this state shall be suspended, unless the party

Appellant to give bond.

applying for such writ of error shall execute in the clerk's office a bond with sufficient security, to be approved by the clerk, conditioned for prosecuting the writ of error to effect, and to pay and satisfy the judgment which shall be rendered in the said cause by the supreme court.

Supreme court to decide at return term.

SEC. 4. *And be it further enacted*, That it shall be the duty of the supreme court to decide all the causes which may be returned to the said court at the return term thereof, unless for good cause the same shall be continued, and in all cases decided in the supreme court, the successful party shall be entitled to the same fee which is now allowed in chancery causes in the circuit court.

Novel questions only to be transferred.

SEC. 5. *And be it further enacted*, That it shall not hereafter be lawful for any circuit court to refer to the supreme court any question of law, except such as may be novel and difficult, and arise in a criminal cause.

Proceedings against securities on writs of error.

SEC. 6. *And be it further enacted*, That the supreme court shall not hereafter render judgment against the security in the bond given by the party upon obtaining a writ of error or appeal, but it shall be the duty of the clerk of the court from which the cause came, immediately upon the receipt of the certificate of affirmance in the supreme court, on the application of the obligee, to issue a *scire facias* to the security or securities in the said bond, to appear at the next circuit court, and show cause, if any he, she, or they have, why judgment should not be rendered against him. If no cause, or an insufficient cause be shown, it shall be the duty of the said court to render judgment against the security or securities for the amount of the judgment of the supreme court, together with the damage, interest, and costs allowed by law.

Writs of error within three years.

SEC. 7. *And be it further enacted*, That a writ of error may issue to reverse any final judgment in the circuit court, at any time within three years after the rendition of the judgment, and not afterward.

Writs of error *coram vobis*.

*SEC. 8. *And be it further enacted*, That any judge of the circuit courts, on an inspection of the records or the transcript thereof, of any cause in which final judgment shall have been rendered, may, if he shall be of opinion that any material mistake or error has been committed by a ministerial officer after the rendition of judgment, grant a writ of error *coram vobis*, returnable to the next term of the circuit court in which such judgment shall have been rendered, and may direct the said writ to operate as a *supersedeas* on the party applying for the same, entering into bond and security in the clerk's office, to be approved by the judge granting the same, conditioned for prosecuting the said writ of error to effect, and pay and satisfy the judgment of the court.

Writ *coram vobis* to be tried at return term.

SEC. 9. *And be it further enacted*, That it shall be the duty of the court to which the writ of error *coram vobis* shall be returned, to try the same at the return term, and in all cases of affirmance judgment shall be rendered against the plaintiff in error, and his, her, or their security, for the amount of judgment which shall have been suspended, together with five per cent. damages, interest, and costs.

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* This section has been somewhat modified by a subsequent act, passed Dec. 30th, 1822. See chapter 32d of this title.

Every judge may give an opinion.

SEC. 10. *And be it further enacted,* That it shall be lawful for any judge of the supreme court, who shall not have given an opinion in the case below, to set in the trial of the said cause in the supreme court.

Damages on writs of error.

SEC. 11. *And be it further enacted,* That whenever the judgment of a circuit court shall, on appeal or writ of error to the supreme court, be affirmed, ten per cent. damages shall be allowed, and not more: *Provided,* That no damages shall be allowed in any cause in the supreme court, unless the judgment of the court below shall have been suspended.

CHAPTER XXVII.

An Act giving Jurisdiction over Water Courses.—*Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the jurisdiction over all rivers not included in the bounds of any county in this state, is hereby given to the county or counties whose jurisdiction now extends to the margin thereof. And it shall be lawful for the proper officer to execute any process to him directed, on the body or property of the defendant therein named, as well on said river as in other parts of such county or counties. All process thus executed, shall be as valid as if executed in the body of the county. This act shall commence and be in force from and after the passage thereof.

CHAPTER XXVIII.

An Act to abolish the Fictitious Proceedings in Ejectment, and for other purposes therein mentioned.—*Passed December* 17, 1821.

Abolished.

Titles tried by action of trespass.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the fictitious proceedings in the action of ejectment be, and the same are hereby abolished; and that hereafter the mode of trying the right and title to lands, tenements, or hereditaments, shall be by action of trespass, in which the plaintiff shall endorse on his writ and copy writ, that the action is brought as well to try titles as to recover damages.

SEC. 2. *And be it further enacted,* That the laws now in force in relation to the action of ejectment, except as far as relates to fictitious proceedings therein, shall be applied to the action of trespass, to try titles as aforesaid.

Plaintiff recovering, to have execution for costs.

SEC. 3. *And be it further enacted,* That if the plaintiff in the aforesaid action of trespass recover, he shall be entitled to an execution for possession, as well as for costs and damages.

Sec. 4. *And be it further enacted*, That it shall not be necessary to file the original note, bond, or paper sued on, with the clerk, but that a copy thereof shall be sufficient.

Note.—An Act passed in December, eighteen hundred and twenty, gives a right of peremptory challenge of four of the jury; provides for the compensation of jurors; and enacts that it shall be lawful to try offenders by indictment in all cases where the law required that they should be tried on presentment.

CHAPTER XXIX.

An Act the better to secure Debts upon Writs of Error.—*Passed December* 12, 1822.

Clerk not taking sufficient security liable to action.

Proviso.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That if any clerk of the circuit court, upon issuing any writ of error, shall take security which shall be insufficient at the time of taking the same, he shall be liable to an action of trespass on the case in favour of the party aggrieved: *Provided*, That nothing in this act contained, shall be so construed as to subject any clerk of the court aforesaid to a recovery in the action aforesaid, for taking as security for any writ of error, any person who was generally reputed sufficient for the sum for which he became bound as security at the time he was taken as security.

CHAPTER XXX.

An Act to prevent frivolous and vexatious Law Suits.—*Passed December* 23, 1822.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That in all suits which may be hereafter brought in this state, to recover damages for slander or trespass, assault and battery, the plaintiff shall not recover more costs than damages, if the damages do not exceed five dollars; unless the judge before whom the suit was tried shall certify that more damages ought to have been awarded by the jury.

Sec. 2. *And be it further enacted*, That this act shall commence and be in force from and after the first day of January next.

CHAPTER XXXI.

An Act to enforce the Payment of Moneys collected by Officers of Courts.—*Passed December* 28, 1822.

Officer, how proceeded against in certain cases.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That whenever a motion shall be made against any officer of any of the courts of this state for not paying over any money received by him in his official capacity, and the receipt of the same shall not appear by the record or any paper filed in the clerk's office, it shall be the duty of the court to cause an issue to be made up and tried by the jury attending the court; and in case it shall be found by the jury that the same has been received by the officer against whom the motion shall be made, judgment shall be rendered by the court against the said officer, for the principal, interest, and such damages as are now in such cases directed by law.

Clerk not entering return on execution docket—penalty.

Sec. 2. *And be it further enacted*, That in case any clerk of any of the courts of this state shall fail to enter on the execution docket, any return of any execution which shall be made by the proper officer of the court, within three days after the said return shall be made, it shall be the duty of the court, on motion of the plaintiff or plaintiffs in execution, or his or her attorney, to render judgment against the said clerk, and his securities, or either, or any of them, for the amount of the execution, together with interest and costs: *Provided*, That those against whom the judgment shall be rendered shall have one day's notice of the motion, and that any fact which shall be contested by the said clerk and securities, or any or either of them, shall be tried by a jury.

Proviso.

Execution docket to be kept on clerk's table in term time.

Sec. 3. *And be it further enacted*, That it shall be the duty of the clerks of the several courts in this state, to keep in the court-house, on the clerk's table, the execution docket, during the whole term of the session of the court; and that if any clerk shall fail so to do, he shall be guilty of a contempt of court, and be punished accordingly; and shall also be liable to any person aggrieved, in an action of trespass on the case.

CHAPTER XXXII.

An Act concerning Inquiry of Damages.—*Passed December 19, 1822.*

Demurrer overruled—inquiry may be had at same term.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That whenever the demurrer to the declaration in an action of covenant, trespass, or trespass on the case, shall be overruled, and an inquiry of damages directed by the court, it shall be lawful for the inquiry thereof to be had at the same term at which such demurrer shall be overruled, any law to the contrary notwithstanding: *Provided*, That nothing herein contained shall be so construed as to authorize the said inquiry of damages to be made at the term to which the writ in said actions may be made returnable.

Proviso.

Sec. 2. *And be it further enacted*, That in all actions of covenant, case, trespass, and assumpsit, when the declaration is filed in due time, and the defendant has failed to plead, a judgment by default may be taken either in vacation, or at the next succeeding term, and a writ of inquiry executed at said term.

CHAPTER XXXIII.

An Act concerning Writs of Error, *Coram Vobis.—Passed December* 30, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That no writs of error, *coram vobis,* shall be granted, unless the defendant shall pay the amount of principal and interest actually due, before obtaining the same; unless otherwise ordered by the judge granting the said writ: *Provided,* That no security shall be required of the defendant under this act.

SEC. 2. *And be it further enacted,* That all laws and parts of laws contrary to the provisions of this act, be, and the same are hereby repealed.

CHAPTER XXXIV.

An Act for the Relief of John P. Hickman and Richard Ellis.—*Passed December* 14, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall be the duty of the clerk of the circuit court of Madison county, to make out a full and complete transcript of the record and proceedings, in a suit instituted on the third of August, 1819, in the late superior court of said county, by John P. Hickman against Richard Ellis, and deliver the same to the clerk of the county court of Madison county, who shall place the same on the trial docket, at the term next succeeding its reception into his office.

SEC. 2. *And be it further enacted,* That it shall be the duty of the said county court to take jurisdiction of said cause, and to try the same as if it had originated in the said county court.

SEC. 3. *And be it further enacted,* That the clerk of said county court, at the time of receiving said transcript, shall issue a notice, in writing, to the attorney of said Ellis, apprizing him of the transfer of said case, which said notice shall be served by the sheriff of said county.

Appeal shall lie to supreme court.

SEC. 4. *And be it further enacted,* That on the decision of said cause, in said county court, a writ of error, or appeal, shall lie immediately to the supreme court, and not to the circuit court; and that the rules and regulations applicable to appeals and writs of error, from the circuit court, shall govern this case.

SEC. 5. *And be it further enacted,* That the costs which have accrued, and may hereafter accrue in said cause, shall abide its ultimate decision, and shall be paid by the party against whom it may be decided.

JUDICIAL PROCEEDINGS IN CHANCERY.— 1807.

Note.—The ordinance passed by the Congress of the United States for the government of their territories, provided that there should be a court to consist of three judges, any two of whom should form a court, and should "have a common law jurisdiction." A government in the Mississippi Territory was erected in the year 1798, but the courts of the territory exercised no powers but those which appertain to courts of common law, until the year 1802, when the territorial legislature passed "an Act for giving equity jurisdiction to the superior courts." That Act was repealed in 1805, by "an Act establishing certain courts therein named, and regulating Judicial Proceedings in this territory;" but its provisions were at the same time substantially retained in the last mentioned Act; and were afterward incorporated in the Digest of 1807, in the Act from which the following extracts are made, the greater part of which will be found under the title "Courts."

CHAPTER I.

Extracts from "an Act establishing Superior Courts, and declaring Powers of the Territorial Judges."—*Passed February* 10, 1807.

Supreme and superior courts to act as courts in chancery.

Sec. 43. *And be it further enacted*, That the said supreme court and the said superior court for the district of Washington, shall also be and act as courts in chancery in said counties of Wilkinson, Adams, Jefferson, and Claiborne, and in the district of Washington, respectively, and shall have and exercise all the power, authority, and jurisdiction incident to courts of chancery, and may ordain and establish all necessary rules for the orderly conducting of business in equity, and for hearing and taking orders on interlocutory matters in vacation. And the clerks of said courts shall keep the rolls, records, and proceedings in equity, separate and distinct from the proceedings in law in the said courts.

May direct issue in fact to be tried.

Sec. 44. *And be it further enacted*, That the said courts of chancery may direct an issue in fact to be tried whenever they judge it necessary; and such issue shall be tried in the same manner, and by the same jury, and the same mode of proceedings observed in the trial thereof in every respect, as if it were an issue in fact joined in a suit in law in the same court.

Judges may issue injunctions.

Sec. 45. *And be it further enacted*, That each of the territorial judges shall have power and authority to issue writs of injunction and of *ne exeat* when the case may require it, but every person shall be discharged from a writ of *ne exeat*, on giving good and sufficient security, and for that purpose the judge or court granting such writ shall endorse thereon the sum and number of securities required.

Courts of chancery to issue usual process and execution.

Sec. 46. *And be it further enacted*, That said courts sitting in chancery shall have power and authority to order and issue all process as hath usually belonged to courts of chancery, and in cases where decrees shall be passed for a sum of money, it shall be lawful for execution to issue thereon against the defendant's goods and chattels, lands and tenements, or against the defendant's body, to satisfy such decree and costs, in like manner, and with the same force and effect as executions may issue on judgments obtained at law in the supreme court of this territory.*

Proceedings on bills filed, when defendant to be held to bail.

SEC. 47. *And be it further enacted,* That on the complainant's filing his bill in the clerk's office in term time, or vacation, it shall be the duty of the clerk to issue a subpœna as is usual in cases of chancery, returnable to the next succeeding term; but in case either of the territorial judges shall give special order to hold the defendant or defendants to bail (which shall be done only on affidavit of the truth of the bill and damages sustained) it shall be the duty of the clerk to issue a writ to the sheriff of the proper county, together with a copy of the bill, which writ shall be in the following form, to wit: "Mississippi territory of the United States, To the sheriff of the county of ———, greeting: We command you to take A. B. if he be found in your county, and him safely keep, so that you have his body before the judges (or judge) of the ——— court sitting in chancery, at ——— on the ——— Monday of ——— next ensuing, to answer a bill in chancery preferred against him in our said court, by C. D. a copy of which bill, accompanying this writ, you will deliver to the said A. B. Hereof fail not, and have you there at that time this writ. Witness ——— Esquire, judge of the court aforesaid, on the —— day of ———, in the year of our Lord ———, and of American Independence the ———."

Form of a writ of chancery.

To be served by sheriff, who shall take bail bond,

And the clerk shall endorse on such writ the sum in which the defendant is ordered by the judge to be held to bail. And the sheriff shall, by virtue of such writ, arrest the defendant, who shall not be discharged from such arrest until he enter into a bail bond, with good and sufficient security, in double the sum endorsed on such writ, conditioned to appear and answer the said bill:—and such bail bond shall be taken and assigned in the same manner, and have the same force and effect, and be liable to the same recovery as bail bonds taken in actions at law; and the sheriff is hereby required, at the time of serving such writ in chancery, to deliver to the defendant a copy of the bill; and if the defendant shall fail to appear according to the rules and practice of the court, after due service and return of such writ, and plead, answer, or demur to the plaintiff's bill, the same may be taken *pro confesso.*

and deliver defendant a copy of bill. Defendant failing to appear; may be taken *pro confesso.*

Costs in equity.

SEC. 48. *And be it further enacted,* That costs in equity shall be paid by either party, at the discretion of the court.

NOTE.—The 47th Section was partially repealed by an Act passed December 18, 1811, entitled "An Act regulating Judicial Proceedings in certain cases, and for other purposes," in the following words.

[SEC. 20. *And be it further enacted,* That so much of the 47th section of the Act, entitled "An Act, establishing Superior Courts, and declaring the Powers of the Territorial Judges," as authorizes either of the territorial judges to hold to bail any defendant or defendants in suits in chancery, be, and the same are hereby repealed.

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* See also title "Executions," Chapter I. Section 34.

SEC. 28. *And be it further enacted*, That the judges of the superior courts of law and equity shall have power in vacation to examine all answers to bills in chancery: and if any defendant or defendants have been held to bail; any judge, on application may, and he is hereby authorized to reduce or discharge such bail so taken as aforesaid.]

CHAPTER II.

[The following Act was originally passed with the title under which it now appears, on the 1st February, 1805.

In the Digest of 1807, it was blended with the attachment law, and made the 16th, 17th, 18th, 19th, and 20th Sections, of "An Act directing the Method of Proceeding in Courts of Common Law and Equity, against Absconding Debtors and other Absent Defendants."]

An Act empowering Courts of Equity to proceed against absent Defendants.—*Passed February* 1, 1805.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That if the defendant in any suit in equity, against whom subpœna or other process may issue, shall not cause an appearance to be entered within such time and in such manner as by the rules of the court the same ought to have been entered in case such subpœna or other process had been duly served, and affidavit being made that such defendant resides beyond the limits of the territory, or that upon inquiry at his usual place of abode, he could not be found so as to be served with such process, and that there is just cause to believe that such defendant is gone out of the limits of the territory, or otherwise absconded to avoid being served with such subpœna or other process, then in either case, the court may make an order directing such defendant to appear at a certain day therein named; a copy of which order shall be published within forty days thereafter in some gazette regularly published in this territory, for such space of time as the court shall direct, and shall within the time aforesaid, be posted up at the door of the court-house where made; and said court may, at their discretion, direct such order to be published in any gazette in the United States, and for such space of time as they may deem reasonable; and if the defendant do not appear within the time limited by such order, or within such further time as the court shall appoint, then, on due proof of publication as aforesaid, the court may order the plaintiff's bill to be taken *pro confesso*, and make decree thereon, and carry such decree into full effect as in other cases: *Provided*, that proceedings in equity against absent defendants, and decrees made on such proceedings, shall be subject to the restrictions, limitations, and provisos, herein after mentioned.

Absent defendants, how to be proceeded against, on failing to appear according to the rules of court.

On affidavit of defendant's absence from the territory or absconding,

Court to make an order directing such defendant to appear, to be published in some gazette of the territory, &c.

and at discretion of the court, in that of any state, and in case of failure to appear, &c.

on due proof of publication as aforesaid, bill may be taken *pro confesso*, and command decree, &c.

Proviso.

SEC. 2. *And be it further enacted*, That the complainant shall, before obtaining any decree by virtue of the foregoing section of this act give good and sufficient security in such sum as the court may direct, to abide such order, touching the

Complainant to give security to forego such order, touching the restitution of estate to be effected by any such decree, the court may make on defendant's appearance. Proceedings on appearance in the territory of non-resident defendants within two years after decree. To be served with a copy thereof. Or in case of such defendant's death in that time. On the heir being feme covert, an infant, person non compos mentis, or on executors or administrators, and being known to the complainant.

restitution of the estate or effects to be effected by such decree as the court may make concerning the same, on the appearance and petition of the defendant to have said cause reheard; and if any decree shall be made in pursuance of this act against a person residing beyond the limits of the territory, at the time of pronouncing such decree, and such person shall, within two years after making the same, reside within the territory, or become publicly visible therein, then such defendant shall be served with a copy of such decree in a reasonable time after such residence or public appearance shall be known to the complainant, and in case such defendant depart this life within two years after making such decree, and before the service of such copy, then if the heir of such defendant shall have any real estate, whereof possession shall have been given to the complainant, and such heir may be found, or if such heir be a *feme covert*, infant, or person *non compos mentis*, the husband or guardian of such heir, or if the personal estate of such defendant shall have been levied on, or possession thereof given to the complainant; then the executor or administrator, if any such there be, shall be served with a copy of such decree, within a reasonable time after the death of the defendant, and his heirs, executors, or administrators in this territory shall be known to the complainant.

Such decree in case of such person failing to appear and petition within 12 months after notice thereof, to stand confirmed.

Sec. 3. *And be it further enacted*, That if any person or persons served with a copy of such decree shall not within twelve months thereafter appear and petition to have the cause reheard, such decree made as aforesaid shall stand absolutely confirmed against the person or persons served with a copy as aforesaid, his, her, or their heirs, executors, or administrators, and all persons claiming under him, her, or them, by virtue of any act done after the commencement of the suit.

Such persons, upon such notice, may within one year, or without notice, may within three years, upon payment of costs of suit, answer the bill, &c.

Sec. 4. *And be it further enacted*, That if any person served with a copy of such decree as aforesaid, shall, within twelve months thereafter, or if any person, not so served, shall, within three years after pronouncing such decree, appear and petition to be heard touching the matter of such decree, and pay the cost of suit, such person or persons, his, her, or their representative, or any person claiming under him, her, or them, by virtue of any act done before the commencement of the suit, may be admitted to answer the bill, and such proceedings had, as if no decree had passed.

Or if not, such decree, so made, shall stand confirmed,

Sec. 5. *And be it further enacted*, That if any person or persons against whom such decree shall be made, his, her, or their heirs, executors, or administrators, shall not within three years next after making such decree, appear and petition to have such cause reheard, and pay costs of suit as aforesaid, such decree made as aforesaid shall stand absolutely confirmed against the defendant or defendants, his, her, or their heirs, executors, and administrators, and against all persons claiming or to claim by, from, or under him, her, or them, or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit. *Provided*, this act shall not be so construed as to authorize proceedings against persons residing out of the Territory, unless the ground or cause of action, or the transaction on which the bill may be brought, took place within the territory.

CHAPTER III.

Extract from an Act passed 24th December, 1812, entitled "An Act making farther Regulations in Judicial Proceedings."

SEC. 10. *And be it further enacted*, That the courts of equity shall hereafter have jurisdiction in all cases of gambling consideration, so far as to sustain a bill for discovery, or to enjoin judgment at law.

NOTE.—The Act concerning Wills, originally passed March 12, 1803, section 55, provides that within five years from the time of the first probate of any will, any person interested in such will may, by bill in chancery, contest the validity of the same, and that the court of chancery may thereupon direct an issue or issues in fact, to be tried by a jury as in other cases. It also gives the right of appeal from the orphans' court, to the supreme or superior court in chancery. In like manner the "Act concerning Divorce and Alimony," passed March 10, 1803, provides that the supreme or superior courts of the territory having equity jurisdiction, should have jurisdiction of all cases of divorce, provided the parties were inhabitants of the territory. See titles "Wills" and "Divorce and Alimony."

CHAPTER IV.

An Act concerning Injunctions.—*Passed December 12, 1816.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That hereafter no injunction shall be granted to stay an execution of a judgment at law, unless the party applying for such injunction, or to be benefited thereby, shall first sign and seal a release of errors in such judgment at law, and file the same in the office of the clerk of the court, in which such judgment shall have been obtained, and whenever an injunction shall be dissolved, damages after the rate of six per centum shall be added to the amount of the judgment: *Provided*, The court be of opinion that the injunction was obtained for delay.

No injunction to stay execution until release of errors signed.

Damages on injunction being dissolved.

CHAPTER V.

Extract from an Act passed February 7, 1818, "for the better Regulation of Judicial Proceedings."

SEC. 9. *And be it further enacted*, That the superior courts of this territory sitting in chancery, shall in all cases where a bill is pending or may be hereafter filed to compel the specific performance of a contract, have power to make a decree, vesting title to any property, real or personal, in the complainant, as fully and effectually, as if conveyed by the defendant, in conformity with the contract on which such bill and decree are founded: and a writ shall issue to the sheriff or other officer, commanding him forthwith to put such complainant in possession.

CHAPTER VI.

Extracts from an Act, passed 14th Dec. 1819, entitled "An Act to regulate the Proceedings in the Courts of Law and Equity in this State."

SEC. 17. *And be it further enacted,* That the equity jurisdiction heretofore belonging to the superior courts of law and equity in the territorial government, shall be, and hereby is vested in the circuit court of this state.

SEC. 18. *And be it further enacted,* That the said court, when a bill praying a review of the proceedings, in which a decree shall have been pronounced, shall be presented, may, upon such bill and the circumstances of the case, as the same shall appear satisfactory, direct the proceedings on such decree to be stayed until a decree on the said bill of review shall be made, or until further order of the said court; or the said court may refuse to grant a stay of proceedings in that case as may seem right: *Provided,* That the said court may, in either of the said cases, direct such security to be given, and in such places, as is usual in cases of injunction, or such other security as may seem reasonable: *Provided,* That no bill of review shall be brought on motion made therefor, except it be within three years from the time of pronouncing such decree, saving to infants, *feme coverts,* persons *non compos mentis,* persons imprisoned or beyond seas, a right to move a bill of review, within three years after such disability shall have been removed.

CHAPTER VII.

An Act to regulate Proceedings in Chancery Suits.—*Passed January* 1, 1823.

Mode of commencing suits in equity.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the mode of commencing suits in equity or chancery shall be by filing a bill with the clerk of the circuit court of the county in which the suit is instituted, wherein the clerk shall issue a subpœna *ad respondendum,* with a copy of the bill, which shall be served by the sheriff of the county where the defendant resides, or may be found, and returned to the first day of the next term.

Time allowed for filing answer or demurrer.

SEC. 2. *And be it further enacted,* That the defendant shall file his answer or demurrer within thirty days after the service of the subpœna, unless within that period he shall obtain further time from the clerk of the said court, or from a circuit judge, on reasonable cause shown, which further time shall not extend beyond the first day of the next term, otherwise the bill shall be taken *pro confesso,* and the complainant, if he deems it necessary, may take an attachment to compel an answer.

No plea or special demurrer shall be filed.

SEC. 3. *And be it further enacted,* That no plea or special demurrer shall be filed to any bill or answer, but it shall be lawful for the defendant to embrace all the matter of his plea and demurrer, either general or special, in his answer, and shall have the same benefit thereof as if the same had been pleaded: *Provided*, That the defendant may demur generally to the bill, which, if overruled, he shall pay costs thereon, file a sufficient answer, and go to trial forthwith if the complainant requires it, otherwise the bill shall be taken *pro confesso*, and an attachment may issue to compel an answer.

Proviso.

Exceptions, when filed.

SEC. 4. *And be it further enacted*, That at the time of filing his answer, the defendant shall also file his exceptions, if he chooses to except to the bill, for scandalous or impertinent matter; and the complainant also, on or before the first day of the term next after the filing of the answer, shall file his exceptions thereto, if he chooses to except for scandal, impertinence, or insufficiency:—All exceptions shall be heard and determined by the presiding judge, in open court, the first term after they are filed, and if filed on the first day of the term, they shall be heard and determined during that term:—If any of the exceptions are sustained, the party filing them shall be entitled to his cost thereon, and a continuance of the suit to the next term if he prays it, if all the exceptions are overruled, the opposite party shall be entitled to his costs thereon, and a continuance if he prays it: *Provided*, That where exceptions filed to the insufficiency of an answer are sustained, the defendant shall forthwith file a sufficient answer, and come to trial immediately, if the complainant prays it, unless the court for good cause grant further time, otherwise the bill shall be taken *pro confesso* as to the insufficient matter, and an attachment may issue to compel a sufficient answer: *And provided also*, That at any time before the hearing of the cause, the court may grant either party leave to amend his bill or answer, whether exceptions are taken or not.

To be heard and determined at the first term.

Proviso.

Replication not required.

SEC. 5. *And be it further enacted*, That it shall not be required to file a replication to an answer, and that in all cases where the answer is filed ten days before the sitting of the court, or the bill is taken *pro confesso*, for want of an answer, the cause shall be heard and determined at that term, if practicable, unless on good cause shown, either party continue the same.

Order, pro confesso, may be set aside.

SEC. 6. *And be it further enacted*, That before a decree is pronounced on a bill taken *pro confesso*, the court shall be satisfied, by sufficient evidence, of the justice of the complainant's claim or demand; but in all cases, before the hearing of the cause, the defendant shall have leave to set aside the order *pro confesso*, by filing a full and complete answer, and that where an attachment may issue for want of an answer, or sufficient answer, or for not obeying the order, or performing the decree of the court, or for disobedience to its process, the defendant shall be discharged therefrom by a compliance at or before the next term.

Judge to render decree.

SEC. 7. *And be it further enacted*, That the presiding judge shall render his decree in writing, on or before the adjournment of the court, unless in weighty and difficult cases, in which he may be indulged to the ensuing term.

Answers, &c. before whom sworn.

SEC. 8. *And be it further enacted*, That all answers and bills for injunctions, and for writs of *ne exeat*, shall be sworn to before any clerk of a circuit court, judge or justice of the peace.

Defendant to have notice of intention to apply for injunction.

SEC. 9. *And be it further enacted*, That the complainant shall cause a copy of his bill for an injunction to be served on the defendant, with notice of at least ten days, of the time and place when and where he intends to apply for an injunction: And that it shall be lawful to grant writs of *ne exeat*, not only in cases where a sum of money is due, but also where the complainant has an equitable claim or demand against the defendant: *Provided*, That all writs of injunction and *ne exeat* may be dissolved at the next term after they were granted, on good cause shown.

Court may refer matters of account to the clerk.

Parties may appeal.

SEC. 10. *And be it further enacted*, That when it is necessary to the justice of the case to have a reference of matters of account, the court in its decree shall order the same to be referred to the clerk, to ascertain and report thereon, at or before the next term; and from which either party may appeal to the court, having given the opposite party ten days notice thereof, with the grounds of appeal distinctly set forth, and if the party appealing does not prevail, he shall pay cost thereon; but if a decree cannot be given on the merits of the case, until matters of account between the parties are referred, then the same shall be referred and ascertained before the hearing, under such rules as the court may prescribe. In ascertaining and adjusting accounts, sums and items, not exceeding ten dollars each, shall be allowed on the party's oath, unless disproved by sufficient testimony; and that sums and items above ten dollars each, shall be proved by sufficient vouchers or evidence.

CHAPTER VIII.

An Act to authorize a Change of Venue in Chancery Causes in certain Cases.—*Passed December* 31, 1822.

Judge having been employed as counsel, change of venue may be made.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That it shall be lawful from and after the passage of this act for any plaintiff or defendant in any suit in chancery, in any of the circuit courts in this state, to change the venue of such suit in chancery, where it shall appear to the court that the judge of the circuit in which such suit in chancery is pending, has at any time previous to his appointment as judge of said circuit, been employed in the suit so pending by either plaintiff or defendant, as counsel in the said suit; or where it shall appear to the court, that the judge of the circuit is connected to the parties interested in such suit by affinity or consanguinity.

SEC. 2. *And be it further enacted*, That when a change of venue under the provisions of this act shall be allowed for the reasons above set forth, the judge of the circuit, where such suit is pending, shall, on application, change the venue thereof to an adjoining circuit free from the like exceptions; and the clerk of the circuit court where such suit was instituted, shall transmit, without delay, to the clerk of the circuit court to which such suit may be changed, a full transcript of all orders, motions, and records entered on his books in relation to the suit so pending, with all the original papers and proceedings in the case, and all bonds and recognizances, and all other matters in relation to the cause in controversy, shall be as valid to all intents and purposes, as they would have been had such change of venue not have been made; and the suit so changed shall be placed in the same situation in the court to which it shall be changed, as if the same had been instituted in said court.

Clerk to make transcript.

Sec. 3. *And be it further enacted,* That the decrees, orders, and other proceedings in the case shall be as binding on the parties concerned in such suit, as if the same had been determined in the court where the suit originated; in every respect whatever.

NOTICE TO THE READER.

Many legislative provisions which might have been brought under the general head of "Judicial Proceedings," have, for the sake of greater distinctness and convenience, been placed under the following Titles.

Attachments.
Bills of Exchange and Promissory Notes.
Executions.
Joint Obligors and Securities.

JURIES.—1807.

CHAPTER I.

An Act concerning Juries.—*Passed February* 11, 1807.

Sec. 2. *And be it further enacted,* That no person under the age of twenty-one years, or above the age of sixty, nor any person continually sick, or who may be diseased at the time of the summons; or any person who has been convicted of any felony, perjury, forgery, cheat, or conspiracy, or offence, shall be summoned on a jury.

Sec. 3. *And be it further enacted,* That it shall be lawful for the court to fine any *talesmen,* who being present when they are called, do not appear in court; or who after appearance, wilfully withdraw themselves during the same day.

Sec. 4. *And be it further enacted,* That when any special court for the trial of criminal causes is about to be held, it shall be the duty of the clerk of such court to issue a precept to the sheriff, to return the same number of jurors as are required for such court at its ordinary session: and the sheriff shall draw them by lot, as in other cases; except that he shall take a part out of each box, proportioned to the number in each box respectively.

[SEC. 5. Allowed special juries in the district of Washington.

SEC. 6. Authorized juries; but both were repealed 7th December, 1811.]

NOTE.—By an Act passed 25th November, one thousand eight hundred and eleven, (see Title "Highways,") Ministers of the Gospel, legally licensed, are exempted from working on roads and serving as jurors.

CHAPTER II.

An Act regulating the Mode of Drawing and Summoning Jurors.—*Passed December 7, 1811.*

Sheriffs to furnish list of the freeholders and householders within their respective counties, to the clerks of such counties.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the sheriff of every county within this territory, shall on or before the first day of the next superior and county courts of their respective counties, and every two years thereafter, furnish to the clerks of said courts severally, a list of the freeholders and householders within his county; which list shall be filed in the office of the clerk of the court to which the same is furnished; and the names so returned, shall be put in a box to be kept by the clerk for that purpose.

Manner of choosing jurors.

SEC. 2. *And be it further enacted,* That there shall be drawn by the clerk and sheriff of the superior and county courts within this territory, in open court, one by one, after the names are shaken together by the clerk for each of the superior courts, thirty-six jurors, and for each of the county courts, fifteen jurors, which shall be entered on the minutes of said court; and the clerk shall issue a *venire facias* for the jurors so drawn, returnable to the next term of said court; and it shall be the duty of the sheriff, at least five days before the term, to summon the jurors so drawn, either by summoning them personally, or leaving a written notice at their usual place of abode, to attend accordingly; and every juror who being summoned as aforesaid, and who shall not attend, shall be liable to a fine, not exceeding twenty dollars, unless a good cause for his non-attendance be shown on or before the first day of the next regular term of the court, after such non-attendance: *Provided* good cause be shown by such delinquent juror, the fine imposed shall be remitted without the payment of costs.

SEC. 3. *And be it further enacted,* That from the whole number of jurors attending the superior court of any county, and summoned as aforesaid, there shall be drawn by lot, not less than thirteen, nor more than eighteen, who shall constitute the grand jury for the term of the court to which they are summoned, and the residue shall serve as traverse jurors during such term: *Provided,* That traverse jurors where the title of land is in issue,* shall be composed of freeholders; and that when from challenges or other causes, there shall be defect of jurors, the sheriff shall, by order of the court, return a sufficient number of qualified by-standers to complete the pannel; but, if the sheriff be interested, the return of qualified by-standers shall be made by such disinterested person as the court shall appoint.

SEC. 4. *And be it further enacted*, That after they have drawn from the jury box the number of jurors required by this act, the names so drawn shall be put into another box, to be kept by the clerk of the court for that purpose, where they shall remain until the whole of the names are drawn out of the jury box first mentioned, when they shall again be put in the box from which they were drawn; and if the clerk or sheriff shall use any fraud, collusion, or partiality in drawing jurors, such clerk or sheriff shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

Jury boxes.

SEC. 5. *And be it further enacted*, That the jury boxes aforesaid, shall be furnished by the different clerks, and secured with sufficient locks, to which no person but the clerk and sheriff in drawing the jury shall have access, and the same shall be a county charge.

When from any cause superior or county courts shall have failed to draw the number of jurors required, sheriffs and clerks to draw.

SEC. 6. *And be it further enacted*, That whenever any superior or county court shall not have been holden in any county in this territory, as required by law, or if when held, they should neglect to draw the number of jurors required, the sheriff and clerk of the court where such failure may happen, shall, in presence of one of the justices of the quorum, at least thirty days previous to the next term of said court, proceed to draw one by one from the jury box, the number of jurors required for said court; and if any justice of the quorum shall refuse or neglect to attend for the aforesaid purpose, having been by the sheriff thereunto required, that then it shall be the duty of the clerk and sheriff to draw the same, and the clerk shall issue a *venire facias* for the jurors so drawn, as if the same had been done in open court.

Jurors in case of death or removal, how supplied.

SEC. 7. *And be it further enacted*, That if at the time any jurors are drawn by lot from the jury box as directed by this act, it shall satisfactorily appear to the officers drawing the same, that the persons drawn, or any of them, have removed from the county, or are deceased since the jury list was made out, then, in such cases the tickets so drawn shall not be included in the number of jurors directed by this act to be drawn, but they shall proceed to draw other jurors until the number is complete, as directed by law.

Persons deemed freeholders.

SEC. 8. *And be it further enacted*, That all persons who have made the first payment on purchase of lands from the United States, together with donation and pre-emption claimants, shall be deemed, and held to all the purposes of this act, Freeholders.

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* An Act passed in November, 1818, which will be found under title "Highways," enacts, that in counties wherein the public lands have not been offered for sale, householders may, till the public lands are so offered, perform the duties required of freeholders.

Sec. 9. *And be it further enacted*, That the provisions of this act shall not be construed to prevent from serving at the next superior court of any county within this territory, jurors already drawn, or who may be drawn pursuant to the several acts now in force, nor to prevent jurors for the next county courts of the several counties, being summoned as heretofore, but that jurors summoned as aforesaid for the next superior courts and county courts respectively, shall serve in the same manner as if this act had not passed.

Repealing clause.

Sec. 10. *And be it further enacted*, That the eighteenth section of an act, entitled "An Act for the Appointment of Justices of the Peace, and the Establishment of County Courts," an act, entitled "An Act to amend an Act regulating the mode of summoning Juries, and for other purposes," the first, fifth, and sixth sections of the act, entitled "An Act concerning Jurors," the first, second, third, fourth, fifth, tenth, and eleventh sections of the act, entitled "An Act regulating the mode of summoning Juries, and for other purposes," also, so much of the seventh section of the last mentioned act as allows a special jury in Washington district, together with all other acts and parts of acts, which come within the purview and meaning of this act be, and hereby are repealed.*

CHAPTER III.

An Act concerning Jurors, and for other purposes.—*Passed January* 22, 1814.

Traverse jurors to be sworn for the term.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That from and after the passage of this act, the clerks of the superior courts shall, on the first day of each term, administer the following oath to the traverse jurors, who shall be attending on said court, to wit: You and each of you do solemnly swear, (or affirm as the case may be,) that you will well and truly try all issues which shall be submitted to you and left to your decision by the court, during the present term, and true verdicts give according to the evidence: So help you God. Which oath or affirmation shall authorize the said jury to try all issues that may be submitted to them during that term of the said court, and talesmen, if any be summoned, shall in like manner take an oath to try all issues which may be submitted to them during the day.

And talesmen for the day.

Note.—The second section is obsolete, and the remaining ones are under title "Justices of the Peace," chapter fourth.

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* This Act is by an Act passed in 1819, explicitly declared to remain in full force, with a proviso that the number of jurors to be summoned for a circuit court shall in no case be less than thirty-six, and for the county courts, twenty-four for the trial terms. See title "Superior Courts."

CHAPTER IV.

An Act concerning Jurors, and for other purposes.—*Passed December* 20, 1816.

Compensation to jurors.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That each and every petit and grand juror, of the original venire, shall be allowed the sum of one dollar for each and every day he shall attend in any court as a juror, to be paid out of any money in the county treasury not otherwise appropriated, on the certificate of the clerk of said court, in which shall be stated the number of days which such person attended as a juror, and the sum to which he is entitled; which certificate the clerk of said court is hereby required to issue accordingly, and the same shall be received in payment of county taxes.

NOTE.—See the Act of 1820, in the next chapter. The other sections relate to the compensation of clerks and sheriffs, and to the tax on suits. See title "Public Officers."

CHAPTER V.

An Act to alter and enlarge the Terms of certain Circuit Courts in this State.—*Passed December* 21, 1820.

[SEC. 1. Will be found under title "Courts Superior."]

SEC. 10. *And be it further enacted,* That in all jury trials either party may and shall have the rights to a peremptory challenge of four of the jury.

NOTE.—I can find no provision as to mileage, but in the case of special juries, under the act in the Digest of 1807, page 174, by which special juries were entitled to the same travelling expenses as witnesses, who were then allowed four cents per mile in going and coming, and necessary ferriages.

CHAPTER VI.

Extract from the Act to form a Sixth Judicial Circuit.—*Passed December* 13, 1821.

Clerk of circuit court of Madison county to draw the names of additional jurors.

SEC. 6. *And be it further enacted,* That it shall be the duty of the clerk of the circuit court of Madison county, to draw the names of twenty persons for jurors in addition to the number, and in the same manner now required by law, and he shall issue a *venire facias* to the sheriff of said county, requiring him to summon the persons whose names shall be so drawn, to attend on the third Monday of the next term of said court, and until the end of the term, who shall be entitled to the same compensation now allowed to jurors, and who shall serve as petit jurors from the time at which they are so summoned to appear, until the end of the term. And it shall be the duty of the presiding judge to discharge those jurors who may be summoned to appear on the first day of the term, except such as

Duty of presiding judge.

may be drawn as grand jurors, on the second Saturday of the term.

NOTE.—Another act, passed at the same session, provided that as no jury had been drawn in the county of Pickens, the sheriff should ascertain the names of resident citizens, and proceed to draw a jury therefrom.

CHAPTER VII.

An Act concerning Jurors, and for other Purposes.—*Passed December* 17, 1821.

Defaulting jurors may excuse on oath in writing.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That hereafter it shall be lawful for any defaulting juror, on a *scire facias* made known to him, to make his excuse in writing, on oath, at the return term of said *scire facias*, on any day of the term, and if it shall appear to the court a sufficient excuse is rendered, the defaulting juror shall be discharged without payment of costs.

SEC. 2. *And be it further enacted*, That nothing in this act shall be so construed as to prevent any defaulting juror from giving testimony *viva voce* in open court, touching his excuse for non-attendance.

NOTE.—As to challenges of jurors in criminal cases, see title "Crimes and Misdemeanors," chapter the first, section the forty-eighth; and as to their power of limiting the fine to be imposed on a person convicted, see the same chapter, section the fifty-third.

For the act depriving the state of the right of peremptory challenge, and dispensing with the necessity of furnishing to a prisoner the list of his jury in certain cases, see title "Crimes," Chap. 9.

CHAPTER VIII.

An Act to provide for drawing Petit Jurors to serve in the Circuit Courts of the County of Dallas.—*Passed January* 1, 1823.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, there shall be drawn in the same mode now prescribed by law, twenty jurors to attend the circuit courts of the county of Dallas, whose names shall be incorporated in the *venire;* and they shall be summoned by the sheriff of said county to appear on the first day of the second week of the term of said court, to serve six days on the original pannel, as petit jurors.

SEC. 2. *And be it further enacted*, That the persons who are returned on the original pannel, and drawn as petit jurors on the first day of the term of said court, shall, after the expiration of six days of said term, be discharged from further attendance as petit jurors, during the term of said court.

JUSTICES OF THE PEACE AND CONSTABLES.—1807.

CHAPTER I.

An Act for the Appointment of Justices of the Peace, and the Establishment of County Courts.—*Passed in* 1807.

Note.—The following sections were nominally repealed in 1814: but such a proviso accompanies the repeal, to make it, perhaps, somewhat doubtful how much is repealed in reality. The editor not deeming it his duty to draw the line of distinction, unless clearly marked by the words of the statute, has considered it as most prudent to retain the whole, leaving the question as to what is and what is not repealed, open, as it ought to be, to judicial cognizance.

[The clause of the repealing act is in the following words: "*And be it further enacted,* That the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 27th, 28th, and 29th sections of an act, entitled in the digest, An Act for the Appointment of Justices of the Peace and the Establishment of County Courts," &c. shall be, and the same are hereby repealed: *Provided,* that no acts or parts of acts repealed by the above recited acts, shall be revived by virtue of this section: *And provided further,* that nothing contained in this act shall be construed to invalidate proceedings already had or now depending before any justice of the quorum or of the peace, or to take away the power of any such justices to try writs of forcible entry and detainer, to punish offenders under the Act for the Suppression of Vice and Immorality, an Act to restrain Idle and Disorderly Persons, and an Act prescribing a Summary Mode for the Trial of Slaves, OR ANY OTHER POWERS OF THE SAID JUSTICES NOT SPECIALLY PROVIDED FOR BY THIS ACT.*]

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That a competent number of justices of the peace shall be appointed in every county; which justices, and every one of them, shall have power and authority, in or out of sessions, to take all manner of recognizances, with or without surety, for good behaviour, to keep the peace, or for appearance at the superior judicatory, as the case may be, to answer to charges exhibited, or crimes committed in the view of such justices, or any of them, and whereof they have not competent power to hear and determine. And in case any person or persons shall refuse to enter into recognizance as aforesaid, and to find surety when thereunto required, it shall and may be lawful for such justice or justices, in or out of sessions as aforesaid, to commit the person so refusing to jail, there to remain until he shall comply with the order of such justice or justices. All recognizances for the peace, good behaviour, or appearance at any court, or for suspicion of any manner of crime, shall be certified before the superior court of the county, to be holden next after the taking thereof, without concealing or detaining the same: and if any person shall forfeit his recognizance of the peace, good behaviour, or appearance, the recognizance so forfeited, with the record of default or cause of forfeiture, shall be sent and certified without delay, by the justice or justices of the peace, into such court.

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* See Chapter 8 of this title.

Powers of justices.

Sec. 2. *And be it further enacted*, That one or more justices of the peace shall and may, out of sessions, hear and determine according to the course of the common law, petit crimes and misdemeanors, wherein the punishment shall be by fine only, and not exceeding eight dollars; and may assess and tax costs. And in case any person shall refuse to obey, fulfil, and perform the sentence or sentences given against him by the justice or justices; it shall be lawful for such justice or justices to commit the delinquent to jail, there to remain until such sentence be performed; and it shall be lawful for such justice or justices, whenever the crime shall be committed in his or their presence or view, to sentence as aforesaid, without any further examination: which fines shall be, by such justice or justices, paid to the treasurer of the county wherein the offence was committed. All warrants issued by a justice or justices, out of sessions, either for apprehending, securing, or committing to jail, persons suspected or convicted of crimes, shall be under the hand of such justice or justices, and directed to the officer or officers, whose duty it shall be to execute criminal process; and such officer or officers shall obey the warrant or warrants issued as aforesaid.

Provisions for rendering process effectual.

Sec. 3. *And be it further enacted*, That to the end that persons indicted or accused for felonies or other offences in one county, who dwell, remove, or shall be received into another county, may be brought to justice; the justices, or any of them, may direct their writs or precepts to all or any of the sheriffs, or other officers of the said counties where need shall be, to take such persons so indicted or accused. And it shall be lawful for the said justices, and every of them, to issue subpœnas and other warrants, under their respective hands, into any county or place in this territory, for summoning or bringing any person or persons, to give evidence in and upon any matter or cause whatsoever, now or hereafter examinable, or in any way triable by or before them; under such pains and penalties as subpœnas or warrants of that kind usually are or ought by law to be granted or awarded.

Justices may issue state warrants.

Sec. 4. *And be it further enacted*, That every justice of a county court, and justice of the peace, in their respective counties, shall have authority, upon complaint on oath to them made of any crime, felony, or misdemeanors, committed or done, to grant warrants to bring the offenders before them; and after examination, may commit to prison, or admit the party to bail, if the offence be bailable, and shall take the recognizance with good and sufficient security, for the informer to appear at the superior court, and prosecute as the laws of the territory direct, and likewise for all the witnesses for and against the offender or offenders, to appear at the next court where the matter is cognizable, ensuing such examination; and which recognizance so taken shall be returnable to the office of the court where the matter is to be tried, under the penalty of two hundred dollars, one half to the informer, and the other half to the government; to be recovered in any court in the territory, by any person who may sue for the same.*

Have cognizance of certain debts.

SEC. 5. *And be it further enacted,* That all debts and demands of twenty dollars and under, where the balance is due on any specialty, note, or agreement, for money or specific articles, or goods, wares, and merchandise, sold and delivered, or for work and labour done, are hereby declared to be cognizable and determinable by any one justice of the peace. who may give judgment, and thereupon award an execution against the goods and chattels, or body of the debtor, which shall be executed and returned by a constable, to whom the same may be directed, in the same manner as a writ of *fieri facias* or *capias ad satisfaciendum* is to be executed and returned.

Depositions of absent witnesses.

SEC. 6. *And be it further enacted,* That where a witness lives in another county in this territory, whose testimony is needed in any trial before a single justice, such justice may issue a *dedimus potestatem* to any justice in the county wherein the witness resides, who shall take the deposition of such witness as therein directed, which shall be admitted as legal testimony: and the deposition so taken and returned to the justice who granted the *dedimus potestatem*, shall be received by him as sufficient evidence in the case for which it was granted.

Appeals.

SEC. 7. *And be it further enacted,* That if either party in a civil cause, upon a trial before a justice of the peace, shall be dissatisfied with the judgment of such justice, such party may appeal to the next county court, where the judgment, including costs, amounts to ten dollars, first giving security for prosecuting such appeal with effect: *Provided,* that the cause shall be tried by, and the appeal made from such justice, five days at least before the term to which the appeal shall be made, otherwise the cause shall be continued to the next succeeding term: *And provided further,* that the justice or justices before whom the suit was first heard, shall, at the request of the respective parties, summon such witnesses to court as they shall name, but shall not sit in court, or give judgment on the appeal.

Justices may grant original attachments.

SEC. 8. *And be it further enacted,* That every justice of the county courts shall have power, and he is hereby authorized and required, upon any complaint being made by any person or persons, for any debt or damage, matter or thing, cognizable in the county courts of this territory, to grant an original attachment against the estate of any person absconding or concealing himself, or removing out of the county privately, returnable to the court of such county, observing therein the rules and restrictions directed for granting original attachments in superior courts, and all sheriffs and coroners shall execute and return the same, and observe the rules and directions appointed to be observed in executing attachments returnable to the superior courts, and the like judgment, recovery, and remedy, relief and proceedings, shall be had thereon, as in like cases are grantable in the said superior courts.

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* See more on this subject in the "Act to provide for the more effectual Administration of Justice." See title "Crimes," Chapter 3.

SEC. 9. *And be it further enacted*, That any one justice of the peace, in cases where, by this act, he has jurisdiction, may issue an original attachment against the estate of any absconding or absent debtor, upon oath of the plaintiff, his agent or attorney, directed to the sheriff or any constable of the county, first taking sufficient security, as in other cases of attachments: and the proceedings thereon shall be in a summary way, in the same manner as in warrants, and the defendant may replevy the goods attached, and either party may appeal from the judgment of the justice, as in other cases.

Of second attachments against the same defendants.

SEC. 10. *And be it further enacted*, That when any attachment shall be granted by any justice of the peace, or any writ of attachment shall issue out of any inferior court, according to the directions of this law, no second, or other attachment, or writ of attachment, granted or issued by the said justice, or any other justice within the same county, or by the justices of the same inferior court, against the real or personal estate of the same defendant, or the execution of them, or any of them, shall bind, or affect the right, title, interest, or property of, or in the real or personal estate of the same defendant, within the same county, or any part thereof; while the proceedings on the said first attachment, or writ of attachment, remain undetermined: any law, usage, or custom to the contrary notwithstanding.

NOTE.—The remaining Sections will be found under title "Courts Inferior," Chapter 1, page 175.

CHAPTER II.

An Act prescribing the Duties of Constables. First passed February 1, 1805, but re-enacted in its present shape in 1807.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That one or two fit and proper persons shall be annually appointed in every captain's district in the several counties of the territory, to act as constables, who shall hold their appointment for one year, and until a successor be duly qualified, and shall take and subscribe the following oath or affirmation, that is to say, I, A. B. do solemnly swear (or affirm as the case may be) that I will faithfully execute and return all summons, warrants, precepts, and executions, directed to me as constable for the county of   , and in all things well and truly, to the utmost of my power, without malice or partiality, perform the duties of a constable for the time I may continue in office: So help me God. And that previous to their entering on their respective appointments, shall severally give bond to the governor and his successors in office, with security, which shall be approved of by the said justices, for the true and faithful performance of the duties of their respective appointments, which bond shall be deposited in the clerk's office of their respective counties.*

In case of vacancy, any justice may appoint a constable, till filled.

SEC. 2. *And be it further enacted*, That any justice of the peace may, in case where there is no constable in his district, either from death, removal, or otherwise, authorize some person to execute the duties of constable until such vacancy is filled.

Their duties.

SEC. 3. *And be it further enacted*, That it shall be the duty of the constables of the several counties to serve all warrants, summonses, executions, and other process to them directed by any lawful authority, agreeably to the tenor thereof, and make due returns of the same: and if any constable shall fail to execute and make return, or to pay to, or account with any person for whom he may have received money, or to return the same to the justice issuing the warrant or execution, within ten days after the receipt thereof, the person so injured as aforesaid may, upon application to any justice within the district, obtain a warrant against him, and such justice shall, upon proof thereof, award judgment and execution for the same, and all costs against such constables, and also fine him for such abuse, in a sum not exceeding ten per cent. on the amount so withheld; and in case of neglect or refusal to serve and return any warrant or summons as aforesaid, may fine the constable so offending in a sum not exceeding the sum due by the defendant.

Constables to take forthcoming bonds.

But in case of neglect or refusal, the constable to take care of property taken in execution, and to receive an allowance therefor.

Further duty of constables in selling property under execution.

SEC. 4. *And be it further enacted*, That where any property shall be taken by a constable by virtue of his office, he may, on the person or persons (from whom such property may be taken) giving bond with approved security for the delivery of such property on the day of sale, suffer it to remain in the hand of the debtor, but when such person or persons shall not be able, or shall refuse to give such security in either case, and the property consisting of live stock, the constable shall take care of the same, and an allowance shall be made him out of the sale of such property, to be adjudged of by the justice to whom such execution is returned, and the constable shall be allowed twenty-five cents for taking such bond, and there shall not be more than fifteen days between the constable's executing and selling any property taken by virtue of an execution; the constable shall give ten days notice, at least, of such sale by advertising at the most public place or places in the neighbourhood, of the time and place of such sale, where the person or persons may reside, from whom such property is taken.

Proceedings on forthcoming bonds.

SEC. 5. *And be it further enacted*, That when a bond shall be given for the delivery of property, and the same shall not be delivered at the day of sale, agreeably to the tenor of said bond, the constable shall return the bond to the justice who issued the execution. And it shall be the duty of the said magistrate, on the application of the plaintiff or his agent, to issue a new execution on the said bond, on which new execution the constable shall be entitled to the same fees as he was entitled to on the service of the first execution, and there shall be no security taken.*

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* See chapter seventh, section eighth of this title.

CHAPTER III.

An Act concerning Writs of Error, and for other purposes.—*Passed December 18, 1811.*

Judgments affirmed, &c.

Ten per cent. damages.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That on writs of error, if the judgment, sentence, or decree be affirmed in whole, the plaintiff in error shall pay to the defendant in error, ten per cent. damages on the sum due, with lawful interest from the day of rendering the judgment so affirmed, besides the costs of the original suit and writ of error.

Decisions of justices of the peace.

SEC. 2. *And be it further enacted,* That whenever any suit brought before a justice of the peace has been finally decided on its merits by such justice, it shall be a bar to a recovery for the same cause of action brought before any other justice of the peace; and all justices of the peace before whom any trial shall have been had as aforesaid, shall, on application of either of the parties, or their legal representatives, or any other person in his, her, or their behalf, grant a transcript of the record of such judgment in favour of such party, which shall be sufficient evidence to bar any recovery before any other justice of the peace as aforesaid, for the same cause of action; and for furnishing a transcript as aforesaid, a justice of the peace shall be entitled to demand and receive, - - $00 25

Transcript of records of judgments.

For every appeal bond, - - - 00 50

For taxing costs, on any execution, - - 00 25

CHAPTER IV.

An Act to amend "An Act prescribing a Summary Mode for the Trial of Slaves."—*Passed January 15, 1814.*

For offences not capital before a justice of the peace, how punished.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That any slave may be tried for any offence not capital, by any justice of the peace on warrant, and may be sentenced to receive any number of stripes not exceeding one hundred, which sentence shall be executed by the constable: *Provided, however,* That no slave shall be sentenced to receive more than thirty-nine lashes, unless two respectable slaveholders, to be summoned by the justice for the purpose of trying said slave, concur with him in the sentence; and any such justice of the peace shall summon and compel the attendance of all witnesses necessary to establish any fact for or against such slave, and shall duly examine such witnesses.

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* This Act has never been expressly repealed; but it seems to have been for the most part superseded by the act of 1814: see chapter 7, of this title. An Act passed in December, 1809, the provisions of which are for the most part temporary, repeals all parts of acts which authorize the taking of forthcoming bonds; but the power of doing so is again vested in constables by the act of 1814.

Justice to summon witnesses.

NOTE.—The other sections are in title 16, chapter 6.

CHAPTER V.

Extracts from an Act, entitled "An Act concerning Juries, and for other purposes.—*Passed January* 22, 1814.

SEC. 3. *And be it further enacted*, That it shall be the duty of the justices of the peace to return all recognizances which may be taken by them, to the offices of the clerks of the superior courts of their respective counties, before the sitting of the court, on the first day of the term of said court, under a penalty not exceeding fifty dollars, at the discretion of the court to which the same should have been returned, on motion of the attorney-general: *Provided*, That the said justice shall have five days notice of such motion: and it shall be the duty of the attorneys general respectively, to prefer all indictments within the three first days of the terms of each of the said superior courts.

Justices of the peace to return recognizances, morning of 1st day of term.

Attorney-general to prefer indictments three first days of term.

NOTE.—See the rest of this Act, under title 38, "Juries."

CHAPTER VI.

An Act to extend the Jurisdiction of Justices of the Peace.—*Passed January* 22, 1814.

NOTE.—This Act, like the sections contained in Chapter I. is *nominally* repealed by the act of December 1814, which will be found in the next Chapter: but as it was repealed with the *same proviso* as the Act of 1807, which proviso evidently continues the operation of some parts of it, the editor thought it proper to retain it, with this caution to the reader.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That all debts and demands not exceeding fifty dollars for a sum, or balance due, on any specialty, note, bond, cotton receipt, contract or agreement in writing, or for goods, wares, and merchandise sold and delivered, or for work and labour done, or for money lent, or for specific articles, or for any sum, or balance due either by a written instrument, or verbal contract, or assumpsit, or in any case not sounding in damages merely, are hereby declared to be exclusively cognizable, and determinable by a justice of the quorum or of the peace, and any such justice is hereby authorized upon complaint made to him to issue his warrant in the nature of a capias, summons, or attachment, as the case may require, and on return thereof shall give judgment, and award execution against the

Jurisdiction extended to fifty dollars.

Before justices of the peace or quorum.

Capias, summons, or attachment.

property or person of the party against whom such judgment is entered.

Appeal.

Security for sums under twenty dollars.

Bail if over twenty dollars.

Cause to be tried *de novo* first term on issue to be made up.

Justices to issue subpœnas for witnesses.

Sec. 2. *And be it further enacted*, That any person aggrieved by the judgment of any justice of the quorum or of the peace, may within five days thereafter, (unless the plaintiff will make oath that he has just reason to believe that by such delay he verily believes he will be in danger of losing his demand, then the justice may demand bail for his appearance at the expiration of five days, and in case such bail is not given, execution shall issue immediately) appeal to the next superior court sitting for his county, first giving to such justice, bond, with good security, in double the amount of such judgment, to prosecute such appeal, and abide by the decision of the superior court where the demand is under twenty dollars, but where the sum demanded exceeds twenty dollars the appellant shall give bond, and security for all costs of suit, and prosecute his appeal to effect, conditioned that in case he shall be cast in the final determination of the appeal, he shall pay and satisfy the condemnation of the court, or that the security shall surrender the body of the principal in custody, or that the security shall pay it for him, and the superior court shall try such appeal *de novo* the first term on an issue to be made up at or before the trial, as any other cause in said court is tried: and the justice of the quorum or of the peace, trying such cause, shall send up to the clerk of the superior court a statement of the cause, with all the papers, and the bond thereunto belonging before the sitting of the said superior court. And the justice before whom the cause was originally tried, shall issue subpœnas for all witnesses that the parties in such appeals may require. And in case the superior court affirms the judgment of the justice below, execution with interest and costs shall issue as in other cases.

Stay of execution for sums not exceeding ten dollars—not exceeding twenty dollars—not exceeding thirty dollars—from thirty dollars to fifty dollars.

Sec. 3. *And be it further enacted*, That when any judgment is rendered by any such justice, he shall, if application be made by the defendant within five days thereafter, give a stay of execution for all sums not exceeding ten dollars, forty days: for all sums over ten, and not exceeding twenty dollars, sixty days: for all sums over twenty, and not exceeding thirty dollars, five months: and for all sums over thirty dollars, eight months. *Provided*, The person applying for such stay shall give bond, and good security in double the amount of such judgment to pay the same with interest, and costs, at the end of said time, and in case it be not paid at the expiration of such stay, such justice shall issue execution against both principal and security, or against either.

Constable to take bail.

Bail how liable.

Sec. 4. *And be it further enacted*, That in case it becomes necessary to issue a capias, the officer arresting any person by virtue thereof, may take security from such person in double the amount of the debt, for his appearance on the day of trial, and in case he fail to appear judgment shall be entered against him; but judgment shall not be entered against the bail, until an execution against the body of the defendant shall have been returned by the officer, that the defendant is not found in the county: and until after a notice shall have been returned *served* on such bail, warning him of the judgment, and to bring in the principal: but in case the defendant cannot give bail, or in case the bail surrender him in time, he shall be in the custody of the law, until he shall satisfy the judgment entered against him, or give security, or be otherwise discharged according to law.

SEC. 5. *And be it further enacted*, That all process issued by a justice of the peace, or of the quorum, shall name the time and place of trial, and shall be served five days previously thereto, and any such justices respectively, shall issue all summonses for witnesses, and compel their attendance, under a penalty not exceeding ten dollars, and the constable shall endorse on the back of all process how he has executed the same, but in the case of a capias, the trial shall be forthwith, if the person arrested cannot give bail.

Process to name time and place of trial.

Penalty on witnesses failing to attend.

SEC. 6. *And be it further enacted*, That if a person be garnisheed in an attachment cause, and a doubt be raised of the right to the property that is alleged to be in the hands of the garnishee, or doubts be raised to the right of any property attached; the justice before whom the cause is on trial, shall stay all proceedings, and send up the attachment with a statement of the cause to the superior court, that the right to such property may be tried by that court, in the mode pointed out by law. Until which trial be had, the writ of attachment shall continue to be a lien on such property, as far as the defendant's right extends.

In cases of attachment, doubtful cases to be transferred to court.

SEC. 7. *And be it further enacted*, That as many constables as there are company districts, shall be appointed by the governor for each county, each of whom shall take the oath prescribed to a sheriff, and shall, before he enters on the duties of his office, give to the governor a bond and security in five hundred dollars, for the faithful discharge of his duties, which bond shall be lodged in the clerk's office of the superior court, having been approved of by such clerk; to be put in suit for any failure; and the constable so appointed, and none other, shall serve all process of the justices of the quorum and of the peace within their respective counties: *Provided*, the sheriff and his deputies may serve and execute any process of such justices, and in case of emergency, any such justice may deputize a constable: *Provided also*, that no constable appointed as above directed shall execute any process without first giving bond, and taking the oath prescribed, under a penalty of twenty dollars; this act shall not be construed so as to affect the commissions of constables now in office, in case they comply with the provisions of this act.

Constables to be appointed, to take oath of sheriff, and to give bond.

Sheriff may execute process.

Proviso. Deputy constables.

SEC. 8. *And be it further enacted*, That in cases above twenty dollars, neither the oath of plaintiff nor defendant shall be taken to establish any fact; but the justices of the quorum and of the peace respectively, shall require the same proof that is necessary to support any fact in a court of justice, and if any such justice dies, or is removed, his papers shall be transferred to some other justice of the quorum, or of the peace; and the

Cases over twenty dollars, parties not to be sworn.

In case a justice dies, &c. his papers to be transferred to another and proceeded on.

justice, to whom the business is so transferred, shall go on, and complete it, issuing all process and executions on judgments rendered by his predecessor, in the same manner as if the business had been originally conducted by him.

Repealing clause.

Sec. 9. *And be it further enacted,* That the first and second sections of the act, entitled "An Act to amend the several Acts now in force for the Recovery of Small Debts," be, and the same are hereby repealed.

CHAPTER VII.

An Act to revise, consolidate, and amend the several Acts relative to Justices of the Peace, and Constables.—*Passed December* 27, 1814.

Justices of the quorum and of the peace to have jurisdiction of sums of fifty dollars.

May issue warrant.

Returnable not less than ten nor more than thirty days.

To hear and determine cause, or nonsuit plaintiff.

May continue cause ten days or less.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That all debts and demands not exceeding fifty dollars, for a sum or balance, due on any specialty, note, bond, cotton receipt, contract, or agreement in writing, or for goods, wares, and merchandise, sold and delivered, or for work or labour done, or for money lent, or for specific articles, or for any sum or balance due either by written or verbal contract, or assumpsit in any case not sounding in damages merely, are hereby declared to be exclusively cognizable and determinable by a justice of the quorum or of the peace; any such justice is hereby authorized, on complaint made to him, to issue his warrant, capias, summons, or attachment, as the case may require, returnable at a certain time and place therein mentioned, not less than ten, nor more than thirty days from the time of issuing the same, and on return thereof, proceed to hear and determine the case on the merits, if the parties appear; give judgment by default if the defendant fail to appear and contest the plaintiff's demand; or enter judgment of nonsuit against the plaintiff if he fail to appear and prosecute his claim, and issue execution against the person, or goods and chattels of the party against whom judgment is so entered, for the debt and costs, or costs alone as the case may require, returnable at a certain time and place therein mentioned, not less than twenty, nor more than thirty days from the time of issuing the same, but such justice may by consent of the parties or on good cause shown by oath or affidavit, adjourn the trial of any cause to any time not exceeding ten days.

Process to be under hand and seal, to be directed to officer.

Justices to make entries of their proceedings, &c.

Sec. 2. *And be it further enacted,* That all warrants, or other precepts issued by any justice of the peace or of the quorum, shall be under the hand and seal of such justice, and shall be directed to the officer, whose duty it is to execute the same; and the justices shall cause fair entries to be made in books to be by them provided for that purpose, of the names of the plaintiff and defendant in any suit brought before them, with the debt and costs adjudged, and the time when the warrant issued, was made returnable, and when judgment was given, together with the return made upon all such process.

SEC. 3. *And be it further enacted*, That any person aggrieved by the judgment of any justice of the quorum, or of the peace, may within five days thereafter, appeal to the next superior court sitting for his county; and in all cases where the sum claimed does not exceed twenty dollars, the trial shall be by the court without the intervention of a jury, and in cases where the sum claimed exceeds twenty dollars, the said court shall try such appeal *de novo*, as any other cause in said courts is tried at the first term on an issue to be made up, at or before the trial; and it shall be the duty of the justice of the peace or of the quorum, trying such cause, to send up to the clerk of the superior court of his county, a statement of the case, with all the papers and the bond thereunto belonging, before the sitting of said superior court.

Parties aggrieved may appeal within five days.

Proceeding thereon.

SEC. 4. *And be it further enacted*, That the justice before whom any cause is depending, shall issue all subpœnas for witnesses who reside within his county, which the parties or either of them require, and in case any witness reside without the limits of his county, such justice may, on satisfactory evidence shown him that sufficient and reasonable notice has been given to the adverse party, of the time and place of taking his or her deposition, issue a commission to some justice of the peace, or of the quorum, where such witness resides, to take his or her deposition, which deposition so taken and returned under the hand and seal of such justice, shall be read in evidence; and the justice from whose judgment any appeal is taken, shall issue all subpœnas for witnesses, which either of the parties may require, returnable to the next superior court after such appeal is taken.

Justices to issue subpœnas for witnesses, or take depositions out of his county.

To subpœna witness to court in cases of appeal.

Proceedings.

[SEC. 5, 6, 7, and 8, will be found under the title of "Attachments."

SEC. 9, 10, 11, and 12, under the title of "Executions."

SEC. 13. *And be it further enacted*, That in case it becomes necessary to issue a capias, the officer arresting any person by virtue thereof, may take a bail bond of the defendant, with security in double the amount of the debt, payable to the plaintiff conditioned for his or her appearance on the day of trial, and in case he or she fail to appear, judgment shall be entered against him or her; but judgment shall not be entered against the bail, until an execution against the defendant shall have been returned by the officer, that the defendant is not found within his county, and until notice shall have been served on such bail, requiring him or her to bring in the body of the principal; but in case the defendant cannot give bail, or in case the bail surrender him or her before the day of trial, he or she shall be committed to the jail of the county, until he or she satisfy the demand against him or her, or be otherwise discharged by law.

Bail bond may be taken.

Bail how made liable.

May surrender principal.

SEC. 14. *And be it further enacted*, That every warrant, attachment, summons, subpœna, or other process issued by a justice of the quorum, or of the peace, shall be returnable at a day certain, giving a reasonable time for attendance, and if any

Process to be returnable on a day certain.

witness duly summoned, fail to appear agreeably to the command of such summons, or subpœna, he or she so failing shall be called out, on such summons or subpœna, and forfeit the sum of ten dollars with costs, for the use of the county, and for which the justice shall immediately enter judgment by default against said witness, to be made final in case said witness do not attend within ten days after notice, served on said witness of such judgment by default, and after the rendition of such judgment, and show cause to the satisfaction of said justice, on oath or affidavit for such default.

Penalty on witness failing to attend.

Summons to issue against them.

Justices to issue attachment, returnable to superior courts.

Sec. 15. *And be it further enacted*, That any justice of the quorum, or of the peace, may issue an attachment for any sum or sums above their jurisdiction, and make the same returnable to the superior court: *Provided*, the plaintiff comply with the terms and requisitions contained in the fifth section of this act,* which attachment shall be executed by the sheriff, his deputy, or the coroner, except that in cases of emergency, such attachment may be executed by a constable.

Constables to be appointed, to give bond, &c.

Sec. 16. *And be it further enacted*, That as many constables as there are captain's districts in each county, may be appointed by the governor, each of whom shall, before entering on the duties of his office, give bond and security in the penal sum of five hundred dollars, payable to the governor, and his successors in office; to be lodged in the clerk's office of the superior court: such bond and security, having been approved by the clerk, to be put in suit for any failure, or delinquency in office, and also take and subscribe the following oath or affirmation: that is to say. "I A. B. do solemnly swear (or affirm, as the case may be,) that I will faithfully execute and return every capias, summons, attachment, or other process directed to me, as constable for the county of ; and in all things well and truly, to the best of my skill and understanding, without malice or partiality, perform the duties of a constable for the time I may continue in office: So help me God." And it shall be the duty of the constable so appointed to execute and return all process directed to him, according to the commands of such process, and pay over all moneys when collected by him, to the justice of the peace, or party authorized to receive the same; and for want of goods and chattels on which to levy any execution, the constable shall take the defendant's body by virtue thereof, and convey him to the common jail of the county, and the sheriff or keeper thereof is hereby authorized and required to retain the defendant so taken in execution, and him or her safely keep till the debt and costs be satisfied, or such person be otherwise lawfully discharged.

Take oath.

Their duty.

Constables may take forthcoming bonds.

Sec. 17. *And be it further enacted*, That where any property is taken by a constable, by virtue of an execution, he may, on the defendant in execution or other person for him, giving bond and security in double the amount of the plaintiff's demand and costs, for the forthcoming of said property on the day of sale,

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* See title, "Attachments," page 18.

Proceedings thereon.

Parties to have notice.

Judgment thereon.

May be relieved by delivering up the property.

permit the property to remain in the possession of such person until the day of sale; and in case said property is not forthcoming, agreeably to the condition of such bond, the constable shall certify the same to the justice of the quorum or of the peace issuing the execution, and at the same time inform the party replevying or his security, that judgment is intended to be entered against him, her, or them, and the said justice shall, in ten days thereafter, enter judgment against the party replevying the property, and his or her security, and issue execution for the plaintiff's demand, including interest and costs; but if the party replevying appear within the time prescribed for entering such judgment, and show sufficient cause to the satisfaction of the justice, for not producing said property on the day of sale, and deliver said property into the hands of the constable, and pay all costs that may have accrued in consequence of his failure, judgment shall not be entered against him, her, or them, for the plaintiff's demand.

Justices may on emergencies appoint constables.

Sheriffs or coroners may execute process.

SEC. 18. *And be it further enacted*, That in case of emergency any justice may authorize some reputable person to execute a process, although not commissioned as aforesaid, and without giving the bond and security required by this act; and the sheriff and his deputies may execute any process directed to him or them by a justice of the quorum or of the peace, and such person, sheriff and his deputies, or coroner, shall be entitled to the same fees as constables for similar services, and be liable to the same penalties.

Constables how liable for neglect of duty.

SEC. 19. *And be it further enacted*, That if any constable fail to discharge the duties imposed by this act, he shall be liable to an action of damages at the suit of the party injured, and shall also pay a fine not exceeding ten dollars, and judgment shall be entered against him for the same, whenever it appears to the satisfaction of any justice that such constable has been guilty of default or improper conduct, which fine when collected shall be applied to county purposes.

Justices to take recognizances of public offenders,

Or commit to jail.

Recognizances to be returned to court.

And also forfeitures thereof.

SEC. 20. *And be it further enacted*, That justices of the peace and of the quorum shall have power and authority to take all manner of recognizances, with or without security, for good behaviour, to keep the peace, or for appearance at the superior court, as the case may be, to answer to charges exhibited, or crimes committed in the view of such justices, or any of them, and whereof they have not competent power to hear and determine, and in case any person or persons shall refuse to enter into recognizance as aforesaid, and to find security when thereunto required, it shall and may be lawful for such justice or justices to commit the person so refusing to jail, there to remain until he shall comply with the order of such justice or justices, and all recognizances for the peace, good behaviour, or appearance at any court, or for suspicion of any manner of crime, shall be certified before the superior court of the county to be holden next after the taking thereof, without concealing or detaining the same; and if any person shall forfeit his recognizance of the peace, good behaviour, or appearance, the recognizance so forfeited, with the record of default, or cause of forfeiture, shall be sent and certified without delay by such justice or justices into such court.

Justices to issue warrants vs. public offenders, to commit or bind over.

To issue search warrants.

Not to try the right of property, which, if contested, to remain with the person possessed thereof, unless he fail to give bond.

SEC. 21. *And be it further enacted*, That such justice of the peace or of the quorum, or any of them, as are now in commission, or may hereafter be commissioned by the governor, shall by warrant under their hand and seal cause any person charged on oath of having committed, or being suspected of any felony or other crime or misdemeanor, to be apprehended and brought before him; to commit such person to jail where the offence is not bailable, or where the offender is either unable or unwilling to give bail to appear and answer to the crime alleged against him or her; to take the recognizance or recognizances of any person charged with any crime not punishable with death, with sufficient security, to appear at the next superior court of his or her county, and answer the charge; and the recognizance or recognizances of prosecutors and witnesses, and to issue search warrants for stolen goods, on the oath of some credible person, particularly describing the place suspected and intended to be searched: *Provided*, That in no case whatever, shall any justice of the quorum or of the peace, try the right of any property alleged to have been stolen; but in all such cases where the property so alleged to be stolen is claimed by two or more persons, the justice of the quorum or of the peace shall require of the person in whose possession the same was found to give security for the forthcoming of the property at the next term of the superior court, to abide the judgment or decision of said court; and in case such person does not give the security required by this act, then the justice may deliver the property to any other person upon their entering into the like bond and security.

Justices to take examination of offenders,

And information of witnesses.

To inform the prisoner that he may ask questions, &c.

All which to be returned to court.

Penalty for neglect of duty.

SEC. 22. *And be it further enacted*, That when any person charged with felony, breach of the peace, or other crime, be brought before any justice of the quorum or of the peace, such justice shall immediately proceed to take the voluntary information of the accused in writing, and the information on oath, of all witnesses that appear against him or her, touching the crime alleged to be committed, and it shall be the duty of said justice to inform the accused of his or her privilege, to ask any question he or she may think proper; which questions with their answers, shall be reduced to writing by said justice, and it shall be the duty of said justice to send up the recognizance or recognizances of the accused, the prosecutor, and of the witnesses, with the information of the accused and of the witnesses, to the next superior court of their county, and any justice failing so to do, shall be fined in the sum not exceeding fifty dollars, to be recovered on motion of the attorney general in the superior court on three days previous notice of such motion.

If offender removes or escapes into another county, warrant to run.

SEC. 23. *And be it further enacted*, That when any person charged with any criminal offence, removes or escapes from the county where such offence is alleged to be committed, into another county, it shall be the duty of any justice of the county to which such person may have removed or escaped, on proof of the handwriting of any justice of the county where the offence was committed, to endorse any warrant issued by him, which shall be a sufficient authority for arresting such offender in any place within the jurisdiction of such justice, and such criminal shall be conveyed for examination to some justice of the quorum or of the peace within the county where the offence is charged to have been committed, and subpœnas for witnesses may issue to any county, on the part of the territory, where it is necessary for bringing an offender to justice, which shall be executed by some officer authorized to execute process in said county, where such witness may reside; and any justice of the county to which any offender may have removed or escaped, on the oath of any credible person, may arrest and have conveyed to the proper county for examination, any person charged with felony or other crime.

And offender to be taken back.

Subpœnas may issue to any county.

Any justice may issue warrant, and convey offender to proper county.

Justices' power to fine, &c. for contempts.

SEC. 24. *And be it further enacted*, That no justice of the peace or of the quorum, for any contempt offered to him, shall have power to order or inflict, or cause to be inflicted any fine exceeding the sum of six dollars, nor any imprisonment exceeding six hours, and then only when such contempt shall be offered whilst such justice is sitting in judgment: and if any justice of the peace or of the quorum shall offend herein, he shall be deemed guilty of a misdemeanor in office, and shall moreover be subject to the action of the party injured, for damages to be assessed by a jury.

Oath of justices of peace.

SEC. 25. *And be it further enacted*, That every person who shall be appointed a justice of the peace or of the quorum shall, before entering on the duties of his office, take an oath to support the constitution of the United States, and also the following oath or affirmation, to wit: I, A. B. do solemnly swear (or affirm) that as a justice of the peace (or of the quorum as the case may be) in the county of   , in all things I will do equal right to the poor and to the rich, to the best of my judgment, and according to the laws of the territory. I will not privately nor openly, by myself or any other person, be of counsel in any quarrel or suit depending before me. The fines and amercements that shall be made, and the forfeitures that shall be incurred before me, I will cause to be duly entered, and will truly and faithfully account for, and pay the same over to the proper officers required by law to receive the same, without concealment or delay. I will not willingly or wittingly take, either by myself or by any other person for me, any fee, gift, gratuity, or reward whatsoever for any matter or thing by me to be done by virtue of my office, except such fees as may be directed and limited by law; but that I will well and truly perform the duties of my said office. I will not delay any person of common right, through favour, affection, or partiality, or refuse to take recognizance of any complaint made before me, which by law comes under my jurisdiction. I will not direct or cause to be directed any warrant by me to be made, to the parties, but will direct all such warrants to the sheriff, or constable of the county, or other officers of the territory; or to some other disinterested person to do execution thereof. The sums of money received before me and paid into my hands, for the benefit of others, I will well and truly account for and pay over, without concealment or delay; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly, and justly, according to the best of my skill and judgment, do equal and impartial justice to all: So help me God."

Penalty for acting without oath.

SEC. 26. *And be it further enacted*, That if any person who shall be appointed a justice of the peace, or of the quorum, shall presume to execute such office without first qualifying himself in the manner by this act required, he shall forfeit and pay the sum of two hundred dollars, one moiety thereof to the use of the county, and the other moiety to him or them who shall sue for the same, to be recovered with costs in any court having cognizance thereof.

Where there is no coroner, or he cannot attend, justices to act as such.

SEC. 27. *And be it further enacted*, That when there is no coroner within the county, or where the coroner cannot conveniently attend, any justice of the quorum or of the peace, may exercise and discharge the duties of coroner when any person is killed or suddenly dies, and shall be entitled to the same fee as the coroner.

Where there is no notary public, or he cannot act, justices to act as such.

SEC. 28. *And be it further enacted*, That where there is no notary public, or where the notary is absent or incapable of acting, any justice of the quorum or of the peace, may discharge the duties required of such notary by the acts of this territory, for which he shall receive the fees allowed by law for such services.

Fees to justices and constables.

SEC. 29. *And be it further enacted*, That the following fees shall be taxed, and allowed to justices of the quorum and of the peace, and constables, in discharge of their duties, viz.:

FOR JUSTICES.

To justices.

Docketing each cause,	$	6¼
Issuing each warrant, summons, subpœnas or notice,		25
Issuing attachment,	1	00
Taking attachment, stay, or other bond,		25
Issuing commission to take deposition,		25
Taking deposition by commission, for each sheet,		25
Each appeal, with proceedings thereon, including bond,	1	00
Each necessary certificate and affidavit,		25
Each mittimus or recognizance,		50
Each judgment,		25
Each execution,		25

CONSTABLES.

To constables.

Serving each warrant,	50
Levying execution and making the money thereon,	50
Serving subpœna or notice,	25

Taking bail bond for appearance, or bond for the forthcoming of property, - - - - -	$ 50
Levying attachment, - - - -	75
Executing mittimus, - - - -	1 00
Whipping a slave, by order of a justice, to be paid by the owner, - - - - - -	1 00
Summoning coroner's inquest, - - -	2 00
For each day's attendance at a superior court, when summoned by the sheriff, one dollar, to be paid out of the territorial treasury, - - -	1 00

Where justice dies, resigns, &c. nearest justice to take and proceed with unfinished business.

SEC. 30. *And be it further enacted*, That when any justice of the quorum or of the peace dies, resigns, or removes from the county, or is removed from office, his papers shall be transferred to the nearest justice, to his place of residence, who shall finish the business of said justice in the same manner as business originally commenced by him.

Penalty on persons who shall pull down advertisements.

SEC. 31. *And be it further enacted*, That if any person shall wilfully pull down any advertisement which is required by law to be set up by any person or persons; he or she so offending, shall forfeit for the first offence five dollars, and for every like offence thereafter, ten dollars, to be recovered before any justice of the quorum or of the peace, by any person suing for the same, which fine, when collected, shall be paid into the county treasury for county purposes.

Justices and constables failing to pay over moneys collected, how liable.

SEC. 32. *And be it further enacted*, That when any justice of the quorum or of the peace, or constable, shall fail to pay over to the person authorized to receive the same, any money collected by them, or either of them in their official capacity, on complaint of such failure to any other justice of the quorum or of the peace, such justice shall issue his warrant or summons, commanding the justice or constable so failing to appear before him, and if it appear that such justice or constable has wilfully failed to pay over the money collected by him, the justice trying the same shall enter judgment against such delinquent for the money so detained, and ten per cent. damages, and no stay shall be given on such judgment.

Repealing clause.

SEC. 33. *And be it further enacted*, That the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, twenty-seventh, twenty-eighth, and twenty-ninth sections of an act, entitled in the digest, "An Act for the Appointment of Justices of the Peace, and the Establishment of County Courts," and the act, entitled "An Act for the Easy and Speedy Recovery of Small Debts," passed February first, eighteen hundred and five; also the act, entitled "An Act to extend the Jurisdiction of Justices of the Peace," passed the twenty-second day of January, eighteen hundred and fourteen, shall be, and the same are hereby repealed; *Provided*, that no acts or parts of acts repealed by the above recited acts, shall be revived by virtue of this section; *And provided further*, that nothing contained in this act shall be construed to invalidate proceedings already had, or now depending, before any justice of the quorum or of the peace.

Proviso.

Proceedings now depending not invalidated.

To have jurisdiction of forcible entries, &c. To punish vice and immorality; disorderly persons—to try slaves. General powers. Constables who have given bond, not affected by this.

or to take away the power of any justices to try such writs of forcible entry and detainer, to punish offenders under the act for the Suppression of Vice and Immorality; an Act to restrain Idle and Disorderly Persons, and an Act prescribing a Summary Mode for the Trial of Slaves, or any other powers of said justices, not specially provided for by this act, or to the office of constable, who have given bond and security as required by the seventh section of the act, entitled "An Act to extend the Jurisdiction of Justices of the Peace."

CHAPTER VIII.

An Act concerning Stays on Executions, and regulating the Fees of certain Officers therein named.—*Passed January* 12, 1816.

[Sec. 1. Will be found under title "Executions," Chap. 9.]

Constables' fees.

Sec. 2. *And be it further enacted*, That the officers herein after named, shall be entitled to demand and receive for the services mentioned, the fees hereto respectively annexed, viz.:

TO CONSTABLES.

For serving each warrant in civil cases, - -	$ 75
For levying execution and making the money thereon, when the sum is less than twenty dollars, -	75
Add four per cent. commission on the amount of twenty dollars and upwards, - - -	
For serving subpœna and notice on each witness, -	50
For each bond required by law to be taken, - -	75
For levying attachment, - - - - -	1 00
For executing mittimus, - - - -	1 00
For summoning a coroner's inquest, to be paid by the county, - - - - - -	2 00
For each day's attendance on the superior court, when summoned by the sheriff, to be paid out of the territorial treasury, - - - -	1 50
For whipping a slave by order of a justice of the peace, to be paid by the owner, - -	1 00
For executing each criminal, search, or *qui tam* warrant, - - - - - -	1 00

Justices not to annex copy of note, &c. to process, but to endorse cause of action.

Sec. 3. *And be it further enacted*, That hereafter it shall not be necessary for justices of the peace, or of the quorum, to annex a copy of the note or account to any warrant, summons, or capias, but to endorse thereon the cause of the action.

In case of appeal, &c. superior court to enter judgment vs. principal and security.

Sec. 4. *And be it further enacted*, That whenever any judgment rendered by any justice shall be removed into any superior court, by appeal, certiorari, or otherwise, and the judgment of the justice be affirmed, judgment shall be entered against the security as well as the principal, and execution may issue against both, or either of them.

SEC. 5. *And be it further enacted*, That all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed. Repealing clause.

CHAPTER IX.

An Act to provide for the Appointment of County Officers.—*Passed December 17, 1819.*

NOTE.—Under the Territorial Government, justices of the peace were appointed by the governor. The constitution of the state of Alabama provides that a competent number of justices of the peace shall be appointed in and for each county, in such mode, and for such term of office as the general assembly may direct. Their jurisdiction in civil cases shall be limited to causes in which the amount in controversy shall not exceed fifty dollars: and in all cases tried by a justice of the peace, right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That there shall be elected by the qualified electors within the limits of each captain's company, in the several counties in this state, two justices of the peace and one constable, who shall hold their offices for and during the term of three years from the dates of their respective commissions; which elections shall be holden by the commanding officer of each company, and two freeholders or householders, as he may appoint, on the first Monday of March next. And it shall be the duty of the persons superintending the election as aforesaid, to make return of the persons elected to the clerk of the county court, who shall certify the same to the governor for commissions.* Justices of peace and constables, how elected.

SEC. 2. *And be it further enacted*, That it shall be the duty of each commanding officer, whenever any vacancy occurs in his company, by death, resignation, or removal of any justice or constable, immediately to notify his company of the same, and call them together by advertisement, giving ten days notice, for the purpose of holding an election to fill such vacancy, which election shall be holden by the commanding officer aforesaid, and two freeholders or householders, as he may appoint. In case of vacancy.

SEC. 3. *And be it further enacted*, That it shall be the duty of the constables elected in the several counties in this state, before they enter on the discharge of the duties of their office, to enter into bond with sufficient security, to be approved of by the justice or chairman of the county courts respectively, payable to the governor for the time being, and his successor in office, in the sum of one thousand dollars, for the faithful performance of the duties of his office: and every constable failing to give bond as herein directed, shall forfeit and pay for every act he shall perform as constable, the sum of fifty dollars, to be recovered before any court of competent jurisdiction, one half to the use of the person who may sue for the same, and the other Constables to give bond and security.

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* By an Act passed December, 1820, the certificate of the chief justice of the county court that a constable, treasurer, surveyor, coroner, auctioneer, assessor, or tax-collector, has given bond and security agreeably to law, shall be sufficient evidence of a right to the office, without any commission.

half to the use of the county in which he may be so elected: and said candidates shall annually renew their bonds, or on failure therein, the chief justice or chairman as aforesaid, respectively shall give notice thereof to the commanding officer of the district for which the defaulting constable has been elected, who shall proceed to elect another person in his place, in the same manner as herein before provided in case of vacancy.

NOTE.—The intermediate Sections relate to other Officers. See Titles, "Taxes," "Treasury Department," and "Sheriffs and Coroners."

Temporary vacancies of constables, how filled.

SEC. 19. *And be it further enacted,* That whenever a vacancy in the office of constable shall occur, or any case of emergency may require it, it shall be the duty of any acting justice of the peace, within the limits of the company where such vacancy may have occurred, to depute some fit person to fill the same, until one may be appointed according to the provisions of this act.

CHAPTER X.

An Act to prescribe the Mode of Certifying Executions from Justices of the Peace from one County to another.—*Passed December* 28, 1822.

Clerk of county court to certify execution.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, where any judgment is rendered by a justice of the peace, and the person against whom such judgment may be rendered removes to another county in this state, it shall and may be lawful for such justice to issue execution to any county in this state against the property of the person against whom judgment is rendered; which execution shall be certified by the clerk of the county court: And it shall be the duty of any legal officer of the county to which such execution may issue, to execute and make return of such execution according to the mandate thereof, to the justice of the county from which execution issued.

CHAPTER XI.

An Act to provide for the Election of Justices of the Peace and Constables.—*Passed December* 31, 1822.

Justices and constables to be elected.

Term of office.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That there shall be elected by the qualified electors within the limits of each captain's company in the several counties in this state, two justices of the peace and one constable, who shall hold their offices for and during the term of three years from the dates of their respective commissions; which elections shall be holden by the commanding officer of each company, and two freeholders or householders as he may appoint, on the first Monday of March next. And it shall be the duty of the persons superintending the elections as aforesaid, to make return of the persons elected, to the clerk of the county court, who shall certify the same to the governor for commissions.

Elections to be held once in three years.

SEC. 2. *And be it further enacted*, That it shall be the duty of each commanding officer at the expiration of each and every term of three years from the first day of March next, to hold an election for two justices of the peace and one constable, as prescribed in the first section of this act.

Vacancies, how filled.

SEC. 3. *And be it further enacted*, That it shall be the duty of each commanding officer, whenever any vacancy occurs in his company, by death, resignation, or removal of any justice or constable, immediately to notify his company of the same, and call them together by advertisement, giving ten days notice, for the purpose of holding an election to fill such vacancy; which election shall be holden by the commanding officer aforesaid, and two freeholders, or householders, as he may appoint, and the individual elected to fill such vacancy, shall hold said office three years from the date of his commission.

CHAPTER XII.

An Act for the Trial of the Right of Property taken by virtue of an Execution or Attachment, and claimed by any Person not a Party to the Suit.—*Passed December* 20, 1822.

NOTE.—This Act will be found under Title 24, Chapter 21.

LAWS AND LEGISLATURE.—1807.

CHAPTER I.

An Act to adopt the Digest of the Laws of the Mississippi Territory, prepared agreeably to a Resolution passed at the last Session of the General Assembly, and for other purposes therein mentioned.—*Passed February* 10, 1807.

Whereas, in consequence of a resolution of the general assembly of this territory, passed at the last session, the governor of this territory did accordingly employ Harry Toulmin, Esquire, one of the judges of the same, to compile a digest of the statutes now in force; *And whereas* the said digest has been laid before the present general assembly, and has been examined and amended:

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the said digest, containing the acts herein after mentioned, is received and established as the law of the said territory, viz.

[Here follows a list of the laws included in the Digest of 1807, which so far as they are in force in the state of Alabama, are incorporated in the present Digest.]

SEC. 2. *And be it further enacted*, That so soon as the acts passed at the present session of the general assembly, shall have received the governor's assent, it shall be the duty of the said Harry Toulmin, Esquire, to introduce the same into the Digest before mentioned, and likewise to expunge from the said Digest such acts and parts of acts as are thereby repealed; after which the same shall be delivered to the public printer, who shall take an oath before some justice of the peace, to print the same with care and accuracy, and to use his best endeavours to preserve the copy from injury.

SEC. 3. *And be it further enacted*, That it shall be the duty of the said Harry Toulmin, Esquire, to compare the printed copy with the original, and to correct in a proper table to be annexed thereto, whatever errors affecting the sense, he may discover in the printed copy, and to add a proper index and table of contents.

SEC. 4. *And be it further enacted*, That the said Digest, and acts of the present session shall, when printed, be entitled, "The Statutes of the Mississippi Territory, revised and digested by the authority of the General Assembly," and that from and after the first day of October next, all the laws of the governor and judges, all the acts of the general assembly of the Mississippi territory, and all statutes of England and Great Britain, not contained in the said volume of statutes, shall cease to have any force or validity in this territory: *Provided nevertheless*, that nothing herein contained shall be so construed, as to affect the following private or local acts, viz.

[Here follows a list of private, local, or temporary acts, which relate almost entirely to persons and places in the present state of Mississippi.]

SEC. 5. *And be it further enacted*, That the said Harry Toulmin be, and he is hereby requested to prepare a set of forms, and brief general principles, for the information of the justices of the peace, and likewise to furnish the public printer with copies of the constitution of the United States, with the amendments thereto, and of such ordinances and acts of Congress as relate to the Mississippi territory, to land titles within the same, to crimes and misdemeanors, and the intercourse with the Indian nations, with the articles of agreement and cession between the United States and the state of Georgia; and that the whole be added to the volume of statutes aforesaid.

SEC. 6. *And be it further enacted*, That there shall be printed two hundred copies of the said volume, which shall be delivered to the governor, who is hereby requested to have the same half-bound, and to cause them to be distributed in the same manner as the acts of the several sessions of the general assembly are directed to be distributed.

SEC. 7. *And be it further enacted*, That no other copies of the acts of the present session shall be printed at the public expense.

CHAPTER II.

An Act supplementary to an Act, entitled " An Act to adopt the Digest of the Laws of the Mississippi Territory, prepared agreeably to a Resolution passed at the last Session of the General Assembly, and for other purposes therein mentioned."—*Passed March 1,* 1808.

Whereas, the indisposition of Harry Toulmin, Esquire, has prevented him from comparing and correcting the typographical errors which may, or have been made by the public printer, in printing the Digest of the statutes of the Mississippi territory, according to the act of the general assembly, entitled " An Act to adopt the Digest of the Statutes of the Mississippi Territory, prepared agreeably to a Resolution passed the last Session of the General Assembly, and for other purposes therein mentioned, approved February 10, 1807."

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That all acts and parts of acts, all bills and parts of bills, and all resolutions of the general assembly, contained in the printed copy of the statutes of the Mississippi Territory, revised and digested by authority of the general assembly, by the honourable Harry Toulmin, one of the United States judges for the Mississippi territory, printed by Samuel Terrell, public printer for the year 1807, containing six hundred and seven pages, are hereby declared of full force and validity within this territory from the dates of their passage, except the Act, entitled " An Act concerning Aliens," and such acts and parts of acts in the said digest which have since been repealed by the general assembly. And it shall be the duty of the secretary of this territory to keep one volume of the printed copies of the said digest of the statutes of the Mississippi territory in his office, to be considered as evidence of the laws of this territory: *Provided,* That nothing in this act contained shall be so construed as to render any typographical error in said digest of validity, or to alter the original or true construction of such error in any clause or sentence thereof.

The digest by Harry Toulmin, adopted as laws of the territory.

Proviso.

CHAPTER III.

An Act to provide for Printing the Laws, Journals, and Bills of the General Assembly.—*Passed December,* 1811.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the secretary of this territory shall, as soon as conveniently may be after he shall receive the same, cause to be made out and delivered an attested copy of the acts passed at each session to the public printer. It shall be the duty of the said secretary carefully to compare the printed copies with the originals.

Secretary to deliver an attested copy of the laws to the public printer.

SEC. 2. *And be it further enacted,* That five hundred copies of the laws enacted at each session shall be printed by the pub-

Number of copies to be printed.

lic printer within one month after an attested copy shall have been delivered to him, with marginal notes and an index, of the same description of page as the laws of the last session of the assembly, on good paper, and with a good neat type; and also seventy-five copies of the journals of the house of representatives, and seventy-five copies of the journals of the legislative council, and such bills as either house may order from time to time; the said journals to be printed on the same kind of paper and type, and with pages of the same size as the laws are herein required to be printed.

Marginal notes and index.

Journals.

SEC. 3. *And be it further enacted*, That William A. Doomgoole be, and he is hereby appointed public printer, for and during the term of one year, commencing on the first day of the present session: *Provided*, That the said public printer do give bond with security, to be approved of by the governor, in the penal sum of one thousand dollars for the performance and completing of the public printing according to the provisions of this act, which bond shall be taken by, and be made payable to the governor of the territory for the time being, and his successors in office.

Public printer to give bond.

Public printer's fee.

SEC. 4. *And be it further enacted*, That the public printer shall receive at the rate of one dollar and fifty cents per page for the number of pages contained in one copy of the laws, one copy of the journals of the house of representatives, and one copy of the journals of the legislative council, in full compensation for the printing required to be done by this act, to be paid out of the territorial treasury, on the certificate of the secretary of the territory, that the said printer has printed the laws and journals according to this act, and setting forth the sum said printer is entitled to for said services, on which certificate the auditor of public accounts shall issue a warrant on the territorial treasurer for the amount therein stated.

[SEC. 5. Repealed in January, 1814.]

On failure of the public printer, governor to employ another.

SEC. 6. *And be it further enacted*, That if the public printer aforesaid, shall refuse or neglect to print the laws and journals within the time directed in this act, then and in that case the governor shall and may employ another printer to perform the said services, and the expense attending the same shall be paid in the same manner as is directed in this act.

Distribution of the laws.

SEC. 7. *And be it further enacted*, That the said laws shall be distributed as follows, to wit: one copy to the governor, one to the secretary, one to each of the territorial judges, one to each justice of the quorum, one to each justice of the peace, one to each attorney general, one to each member of the general assembly, one to each sheriff, one to each coroner, one to the clerk of each court of record within this territory, one to the secretary of the council, one to the clerk of the house of representatives, one to the brigadier general, one to each militia colonel, major, and captain, one to the president of the United States, one to each county surveyor, one to the territorial treasurer, one to each county treasurer, and one to the auditor of public accounts. The said journals shall be distributed as follows, to wit: one copy of the journal of each house to the governor, one to the secretary of the territory, one to each member of the general assembly, one to the secretary of the council, one to the clerk of the house of representatives, and the residue shall be equally divided among the several counties for the use of such of the citizens thereof as may apply for them: *Provided nevertheless*, That no person shall receive more than one copy of the laws and one of the journals of each house.

Distribution of the journals.

Proviso.

SEC. 8. *And be it further enacted*, That it shall be the duty of the secretary of the territory to distribute the said laws and journals.

Secretary to distribute the same.

SEC. 9. *And be it further enacted*, That the secretary of the territory shall be allowed reasonable clerk-hire for copying and comparing the original rolls of the said laws, to be paid on the certificate of the said secretary to the auditor of public accounts, who shall give his warrant on the territorial treasurer for the amount thereof.

[SEC. 10. Expired.

SEC. 11. Repealed in December, 1814.]

SEC. 12. *And be it further enacted*, That the laws and journals required by this act to be distributed, as far as respects the counties east of Pearl river, and Madison county, shall be sent by the secretary to the county court clerk's office, of each of those counties respectively, and it shall be the duty of the secretary, to write on each copy to be distributed, under this act, the name of the officer for whom it is intended.

The distribution as particularly respects the counties east of Pearl River and Madison county.

SEC. 13. *And be it further enacted*, That there shall be appointed by joint ballot of both houses of the legislature, at the commencement of each regular session, a public Printer, who shall continue in office until his successor is appointed.

Appointment of public printer.

CHAPTER IV.

An Act to amend an Act, entitled "An Act to Provide for Printing the Laws, Journals, and Bills of the General Assembly—*Passed November* 14, 1812.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That it shall be the duty of the secretary of the Mississippi territory, to furnish the public printer with a true copy of each and every act of the general assembly, in one day after its approval by the governor.

[SEC. 2. Repealed in 1814.]

SEC. 3. *And be it further enacted*, That if the public printer appointed, shall neglect or refuse, for the space of three days, to give bond and security, agreeably to the provisions of the third section of the act to which this is an amendment, then and in that case, the legislature shall proceed to the election of another printer.

CHAPTER V.

An Act to amend the several Acts relative to the Public Printing.—*Passed January* 15, 1814.

Clerk of the house and secretary of the council, to furnish copies of journals to printer. When to be printed.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That hereafter it shall be the duty of the clerk of the house of representatives, and the secretary of the legislative council, to furnish the public printer with a copy of the journals of their respective houses weekly; and it shall be the duty of the public printer to print the laws and journals, each session of the general assembly, within ten days after the rising of the legislature.

CHAPTER VI.

An Act to provide for a Digest of the Statutes of the Mississippi Territory.—*Passd December* 13, 1815.

Digest provided for.

Of what matter to be comprised.

Marginal notes. Title.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That there shall be a complete edition or compilation of the acts of the general assembly of this territory, in the form of a digest, to be made and prepared as hereafter provided; which digest shall comprise the public acts in force at the time of making said digest; the titles of those which have expired or been repealed, and the dates thereof; the constitution of the United States with the several amendments thereto; the ordinance for the government of the territory of the United States, northwest of the river Ohio; the articles of agreement and cession between the United States and the state of Georgia; and such acts of congress as relate to the Mississippi territory; together with the declaration of independence (not however to include the land laws) arranged under appropriate heads, and following each other in the order the same were respectively passed, with their respective dates noted in their proper places: and the said digest shall be accompanied with marginal notes, and a table of contents, and shall be entitled "Statutes of the Mississippi Territory; the Constitution of the United States, with the several amendments thereto; the ordinance for the government of the Territory of the United States, northwest of the river Ohio; the articles of agreement and cession between the United States and the State of Georgia; and such acts of Congress as relate to the Mississippi Territory, digested by the authority of the General Assembly." *Provided,* That no act or section of an act shall be omitted in the digest where any doubt shall exist as to the same, having been repealed but shall be inserted in their proper places, with a note explaining the ground upon which such doubt exists.

Person of legal knowledge to be appointed to digest, &c.

To enter into bond.

Condition.

To make index and errata.

SEC. 2. *And be it further enacted*, That a person of legal knowledge, skill, and integrity, shall be appointed by the joint ballot of the two houses of the general assembly, immediately after the passage of this act, to make and execute the said Digest, who shall, previously to his entering on the said work, enter into bond and security, to be approved of by the governor for the time being, payable to him and his successors in office, in the penal sum of three thousand dollars, conditioned for the faithful performance of the duties required by this act; and it shall also be the duty of such person, immediately after the said Digest shall be printed, as herein after directed, to collate and note such errors as may be discovered in said work, and shall prepare a compendious index or epitome of the said Digest, alphabetically arranged, and cause the same to be printed in a proper manner by the printer thereof, and annexed to said Digest; and the said work shall be completed and delivered to the public printer on or before the first day of July next.

To be furnished with forms as printed off.

SEC. 3. *And be it further enacted*, That in order to enable the person appointed as directed by the second section of this act, to give to the said work the most ample examination, and to prepare the proper Index and *errata* for publication, he shall be furnished weekly, if required, with one copy of such part of the same as may be then worked off.

NOTE.—The other sections relate to the printing and other temporary arrangements.

CHAPTER VII.

An Act providing for the Distribution of the Digest of the Statutes, and for other purposes.—*Passed December* 13, 1816.

NOTE.—This act relates merely to the distribution and compensation to the printer of the Digest of 1816, and introducing, in an appendix, the acts of that session.

CHAPTER VIII.

EXTRACTS FROM THE CONSTITUTION.

LEGISLATIVE DEPARTMENT.

ARTICLE III.

SEC. 1. The Legislative Power of this State shall be vested in two distinct branches: the one to be styled the Senate, the other the House of Representatives, and both together, "The General Assembly of the State of Alabama," and the style of their laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened."

SCHEDULE.

SEC. 5. All laws and parts of laws now in force in the Alabama Territory, which are not repugnant to the provisions of this constitution, shall continue and remain in force, as the laws of this state, until they expire by their own limitation, or shall be altered or repealed by the Legislature thereof.

CHAPTER IX.

An Act to Digest the Laws of the State of Alabama.—*Passed December* 17, 1819.

Judges and attorney general to digest the laws.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the judges of the circuit courts, and the attorney-general of the state be, and they are hereby appointed commissioners, whose duty it shall be to compile and digest, in a volume of convenient size, all the laws that are now in force in this state, leaving out all such acts, or parts of acts, that have been repealed, retaining their title and time of repeal: and it shall be the duty of said commissioners, and they are hereby required to prepare marginal notes, containing an abbreviation of the substance of each page, which notes of abbreviation shall be printed on the margin of each page.

Make an index.

Prepare amendments.

SEC. 2. *And be it further enacted,* That the said commissioners shall make an index, referring to all the principal matters contained in the volume, which volume shall be entitled "*The Laws of the State of Alabama;*" and the commissioners, or a majority of them, when assembled, are hereby directed to prepare such amendments as they may think the existing laws require, to be by them submitted to the next general assembly.

To translate technical terms.

SEC. 3. *And be it further enacted,* That it shall be the duty of the judges and the attorney-general aforesaid, in all acts containing technical phrases, or words in other than the English language, to translate the same.

SEC. 4. *And be it further enacted,* That the commissioners are hereby required to insert in the digest, the constitution of this state, and of the United States, together with the declaration of independence, and such acts of congress as they may think necessary.

CHAPTER X.

An Act to Provide for the Public Printing, and for other purposes.—*Passed November* 30, 1820.

State printer's salary.

Give bond.

Penalty.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That there shall be a state printer elected annually by joint vote of both houses of the general assembly, who shall receive a salary of fifteen hundred dollars for his services; and before he enters on the duties of his office, shall give bond with security to the governor for the time being, or his successors in office, in the sum of four thousand dollars, for the faithful performance of his duty.*

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* The Act of November, 1818, allowed two dollars and twenty-five cents per page, and required one thousand copies of the Acts; three hundred of the Journals of the House, and one hundred of the Legislative Council. The page contained about three hundred words.

Number of copies of the laws and journals to be printed.

SEC. 2. *Be it further enacted*, That it shall be the duty of the printer for the state to print and publish not more than twenty-two hundred, nor less than fifteen hundred copies of the acts and resolutions of each session of the general assembly; and not more than one thousand, nor less than seven hundred copies of the journals of each house, as may be directed by resolution of the general assembly. And it shall be the duty of the state printer to print all blanks necessary in the executive, the secretary of state, comptroller, and treasurer's office; to print and publish all proclamations, notices, and advertisements from the offices aforesaid; and to print all messages from the governor, reports of the comptroller and treasurer, and such bills and other matters as may be necessary for the use of the general assembly.

Blanks to be printed.

Denomination of type.

SEC. 3. *And be it further enacted*, That the acts and resolutions of the general assembly shall be printed with type of the denomination of *small pica;* the marginal notes thereunto affixed, with *brevier*, and the captions thereof in *Italic*, of the size of *small pica*, and the journals of each house with *small pica;* and published as herein after directed.

Acts and resolutions to be copied.

SEC. 4. *And be it further enacted*, That the secretary of state shall within ten days after the approval of each and every act, or resolution of the general assembly, deliver to the printer for the state a fair copy thereof, affixing thereto proper marginal notes, stating the purport of each paragraph or section, and make a concise and complete index of such laws, which shall be attached to, included in, and published with each pamphlet containing the acts and resolutions of the general assembly.

Index.

Examine proof-sheet.

And it shall be the duty of the secretary of state to collate with, and correct by the original rolls, the proof-sheets of the printed copies of said acts and resolutions respectively, and certify the same to be copied from, and collated with, the original rolls deposited in his office: and shall, in like manner, compare with and correct by the originals deposited in his office, the proof-sheets of the printed copies of the journals of each house.

Time allowed for printing acts.

SEC. 5. *Be it enacted*, That within thirty days after the end of each and every session of the general assembly, the printer for the state shall deliver to the secretary of state the number of copies of acts and resolutions, directed to be printed, collected, and substantially stitched together in one pamphlet, with such numbers of said copies with blue board covers, as may be necessary for an interchange of laws with our sister states, as is herein after provided for. And the printer for the state shall within forty days after the completion and delivery of the acts aforesaid, in like manner deliver to the secretary of state, the number of copies of the journals of each house directed to be printed, collected, and stitched together, the journals of each house in one pamphlet.

Journals.

Acts and resolutions, how distributed.

SEC. 6. *And be it further enacted*, That it shall be the duty of the secretary of state, after retaining for the use of the executive office, and the two branches of the general assembly, fifty copies of the acts and resolutions of each session, to cause to be transmitted to the secretary of state of the United States, four copies, and two to the executive officers of the several states, each, with a request that they send to the executive of this state, in exchange, as many copies of their laws or session acts. And shall cause the residue to be distributed in the following manner, that is to say: to the comptroller of public accounts, one copy, one copy thereof to the treasurer for the state, one to each of the judges of the circuit court and supreme court, one to the attorney general, one to the adjutant general, one to the quartermaster general, one to each solicitor, and to the clerks of the circuit courts of the several counties in the state, in proportion to the population of each county, agreeably to the enumeration last before made; and the clerks of the several counties shall upon the receipt of said pamphlets, distribute the same in the manner following, to wit: to each member of the general assembly from the county, one copy, and to each and every civil officer, one copy. And it shall be the duty of the secretary of state, after retaining for the use of the executive office, and both branches of the general assembly, fifty copies of the journals of each house, to cause the residue to be distributed to the several officers of the state herein before mentioned, one copy each, one thereof to the secretary of senate, one thereof to the clerk of the house of representatives, and to the clerks of the circuit courts in the several counties, in proportion to the population of each. And the clerks of the counties respectively, on receipt of such pamphlets, shall distribute the same as follows, to wit: to each member of the general assembly from the county, one copy, and to each justice of the county court, and of the peace, one copy.

How distributed by the clerks.

Journals, how distributed.

Expenses paid.

SEC. 7. *And be it further enacted*, That the expenses incurred in the distribution and transmission of the acts and journals aforesaid, shall be paid out of the contingent fund, on the order of the governor, drawn on certificate of the secretary of state.

SEC. 8. *Be it further enacted*, That all laws and parts of laws, coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER XI.

An Act to provide for Digesting the Laws of the State of Alabama.—*Passed March* 28, 1821.

Assembly to elect a digester.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That there shall be elected by the joint vote of both houses of the general assembly, a suitable person, whose duty it shall be to compile under one head, all the statute laws now in force in the state of Alabama, relating to each particular subject.

His duty.

SEC. 2. *And be it further enacted*, That the said digester shall lay before the next legislature, on the first day of its session, a manuscript of the digest of laws made as aforesaid, who shall have power to decide on the correctness of the same. And if it appear to the legislature, that said digest is correctly executed, and contains all the statute laws of force in this state, the said digester shall receive such compensation as the legislature may allow.

CHAPTER XII.

Resolutions, making it the duty of Harry Toulmin, and of the Judges of the Supreme and Circuit Courts of this State, to report to the General Assembly, any Defects or Imperfections which may exist in the Statutes of this State. —*Passed December* 12, 1821.

H. Toulmin to report defects, &c. in the statutes of Alabama.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That it shall be the duty of Harry Toulmin, who has been appointed to digest the laws of this state, to make memorandums in the progress of his examination, of any defects, inconsistences, ambiguities, or imperfections, in the statutes of this state, which may appear to him to exist, and to make report thereof, detached from his report of the digest of the laws, to the general assembly at their next session.

Judges to report defects, &c. to the legislature.

And be it further resolved by the authority aforesaid, That it shall be the duty of the Judges of the supreme and circuit courts of this state, to note or make memorandums, of any and all defects and imperfections in the statutes of this state, which they may discover in the course of the discharge of their judicial duties, and to make report of the same from time to time, to the general assembly.

CHAPTER XIII.

An Act to fix the Time for Convening the General Assembly of the State of Alabama.—*Passed December* 6, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, the general assembly of this state shall convene on the third Monday in November, in each and every year.

SEC. 2. *And be it further enacted,* That all acts and parts of acts, contrary to the true intent and meaning of this act, be, and the same are hereby repealed.

CHAPTER XIV.

Resolutions concerning the Printing of the Journals and Laws of the present General Assembly, and for other purposes.—*Passed December* 18, 1821.

NOTE.—The three first Resolutions relate merely to the acts, &c. of December, 1821.

Public printer—manner of receiving his salary.

And be it further resolved, That the public printer shall receive his salary in the following manner, to wit: one-fourth on the delivery of the private laws to the secretary of state, according to law; one-fourth on the delivery of the journals of the senate; one-fourth on the delivery of the journals of the house as above; and the remaining one-fourth at the expiration of the year: and the comptroller is hereby authorized to issue his warrants in his favour for the amount thereof, on the certificate from the secretary that the same are completed.

Comptroller to issue warrant.

NOTE.—An act fixing the compensation of members of the general assembly at four dollars per day, and for other purposes, passed June 15, 1821, is inserted under title 50, "Public Officers."

CHAPTER XV.

An Act to apportion the Representatives among the several Counties of this State, and to divide the State into Senatorial Districts according to the late Census, at a ratio of seventeen hundred and thirty for the Representative.—*Passed December* 14, 1821.

State representatives apportioned.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the representation of the several counties of this state shall be apportioned in the following manner, to wit: the county of Mobile, one; the county of Baldwin, one; the county of Washington, one; the county of Conecuh, and that part of Butler taken from Conecuh, three; the county of Monroe, and that part of Butler taken from Monroe, three; the county of Clarke, two; the county of Henry, one; the county of Wilcox, one; the county of Dallas, and that part of Butler taken from Dallas, two; the county of Perry, two; the county of Marengo, one; the county of Greene, two; the county of Tuskaloosa, and that part of Pickens taken from Tuskaloosa, three; the county of Autauga, one; the county of Bibb, two; the county of Montgomery, two; the county of Shelby, one; the county of St. Clair, two; the county of Jefferson, two; the county of Blount, one; the county of Marion, and that part of Pickens taken from Marion, one; the county of Franklin, two; the county of Lauderdale, two; the county of Limestone, four; the county of Lawrence, three; the county of Morgan, two; the county of Madison, seven; the counties of Jackson and Decatur, three.

Senators apportioned.

SEC. 2. *And be it further enacted,* That the counties of Washington, Baldwin, and Mobile shall form one senatorial district; Conecuh, Covington, Pike, and Henry, one; Monroe, one; Dallas, one; Wilcox and Clarke, one; Marengo and Greene, one; Perry and Autauga, one; Bibb and Shelby, one; St. Clair and Blount, one; Jefferson, one; Tuskaloosa and Pickens, one; Marion and Franklin, one; Lawrence, one; Morgan, one; Jackson and Decatur, one; Limestone, one; Madison, one; Lauderdale, one; Montgomery and Butler, one; each of which districts shall be entitled to one senator and no more.

Returning officers.

SEC. 3. *And be it further enacted,* That the sheriffs of the counties of Washington, Conecuh, Clarke, Marengo, Perry, Shelby, Blount, Marion, and Montgomery shall be the returning officers for their respective districts; and the sheriffs of the other counties of the districts, shall make return to the returning officers, within ten days after the senatorial election, except the counties of Conecuh, Covington, Henry, and Pike, which shall be allowed twenty days.

CHAPTER XVI.

An Act concerning the Printing, Binding, and the disposal of the Digest of the Statute Laws of the State of Alabama.—*Passed January* 1, 1823.

Digester's compensation.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That an appropriation of fifteen hundred dollars be, and the same is hereby made for Harry Toulmin, for having compiled a correct Digest of the statute laws of this state, in conformity to an act of the general assembly, passed twenty-eighth day of November, eighteen hundred and twenty-one: and the comptroller of this state is hereby authorized and required to issue his warrant on the treasury for the same, which shall be paid out of any moneys in the treasury not otherwise appropriated: *Provided*, that nothing in this act shall be so construed as to prevent the next legislature from making any additional compensation that they may deem just and proper.

Proviso. Legislature may make additional allowance.

Digester to make index.

SEC. 2. *And be it further enacted*, That the said Harry Toulmin be, and he is hereby appointed and required, to make a complete index to the said Digest, and that he receive therefor such compensation as may be allowed him by the next general assembly of this state; and in case of his death or inability to complete the same, the governor of this state, in that event, is hereby directed and required to appoint some suitable person to undertake and complete the same.

Governor to receive proposals and contract for printing digest.

SEC. 3. *And be it further enacted*, That the governor of this state is hereby required to receive proposals until the first day of March next, and at that time to appoint some suitable person or persons to print the said Digest upon the most advantageous terms he can obtain; to contract for stationary, and all such articles as may be necessary for printing and binding the said work; and to contract with some suitable person to bind the same, which binding shall be executed in a plain, strong, and neat manner; and for all such contracts the comptroller of public accounts, upon application to him by the governor, is authorized and required to issue a warrant on the treasury, which shall be paid out of any moneys in the treasury not otherwise appropriated: *Provided*, that the governor shall in no case make any advance of money on account of any of the above contracts, without first obtaining the bonds of the parties, payable to the governor of the state, and his successors in office, with good and sufficient security, conditioned that the person or persons receiving the same in advance, shall well, truly, and faithfully execute and perform the contract which he or they

Proviso.

To take bond.

may have undertaken. And the governor is hereby required to enter into no contract or contracts as aforesaid, without first taking bonds, with security, that the same shall be punctually and faithfully executed and performed by times certain, and to be named in said bond or bonds.

Digester to examine proof-sheets, &c.

SEC. 4. *And be it further enacted*, That Harry Toulmin be, and he is hereby appointed to superintend the printing of the said Digest, to examine the proof sheets, and see that the work be correctly printed according to the arrangement and original plan laid down by the digester; and that he receive therefor as a compensation, such sum of money as the next general assembly of this state may allow. And in case of the death of the said Harry Toulmin, or his inability to act, the governor of this state is hereby required to appoint some suitable person or persons to perform the duties above required.

2000 copies to be printed.

To whom distributed.

SEC. 5. *And be it further enacted*, That there shall be printed and bound, two thousand copies of the Digest of the laws of this state, which, when completed, shall be disposed of and distributed in the manner following: there shall be given to the governor of this state, one copy; to the comptroller of this state, one copy; to the treasurer of this state, one copy; to the secretary of this state, one copy; to each of the judges of the circuit courts, one copy; to each of the judges of the county courts, one copy; to each of the clerks of the circuit and county courts, one copy; which are to be kept by them for the use of their respective courts in their respective counties; which said clerks, upon the receipt of the same, shall give their obligation to deliver the same to their successors in office; to the attorney general, and to each of the solicitors of this state, one copy; and to each justice of the peace of this state, one copy; and every justice of the peace who is entitled to a copy of the said Digest, shall receive the same upon application to the judge of the county court of the county in which he resides, and shall at the time of receiving the same, execute and deposite with the judge aforesaid his receipt, that at the expiration of the term of his service, or at the time he shall cease to exercise the duties of his office (if he should cease to do so before the expiration of his term of office) he will return the same to the judge of the county court of the county in which he resides; which said receipt shall be filed in the clerk's office of the county in which he resides, as aforesaid. The balance of the said copies shall be sold at the price of five dollars per copy, in the manner following: there shall be appointed by the governor in each county in this state suitable agents, whose duty it shall be to sell such number of copies as the governor may deem necessary to deposite with them; and each agent shall give bond payable to the governor of this state and his successors in office, with good security, which bond shall be deposited in the secretary of state's office, conditioned for the faithful discharge of the duties that may be required of them, and to account to the state for all moneys which they may receive from the sale of said books, and pay the same into the treasury of this state.

Governor to appoint agents to make sale of digest.

Sec. 6. *And be it further enacted*, That the said Harry Toulmin shall digest all the acts of this present session of the legislature, and shall include the same in the said digest, which shall be executed in the same manner as he has digested all the previous acts of the legislature. The compensation for which is included in the appropriation made for him by the first section of this act.

Sec. 7. *And it be further enacted*, That an Act to enable the People of the Alabama Territory to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States; the Constitution of the United States, and the Declaration of American Independence, be also printed and embodied in said digest.

CHAPTER XVII.

An Act to compel Clerks of Circuit and County Courts to give Bond and Security within the time therein prescribed.—*Passed December* 24, 1822.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all clerks of the circuit and county courts hereafter elected, shall enter into bond and security for the faithful performance of their several duties as are by law now prescribed, before the person now authorized to take and approve the same, on or before the first day of the term next succeeding their elections, otherwise the said office shall be considered vacant, and the said vacancy shall be filled as heretofore prescribed in other cases of vacancy in the said office.

Clerks to enter into bond.

Vacancies on failure, how filled.

Sec. 2. *And be it further enacted*, That all acts or parts of acts repugnant to this act, be, and the same are hereby repealed.

Repeal.

Sec. 3. *And be it further enacted*, That if at any time it shall be made known to the judge of the circuit or county court, that any person who has been or may be appointed or elected clerk of said county or circuit court, has failed to give bond with sufficient security for the faithful performance of his duty, it shall be the duty of said judge of the said county or circuit court, as the case may be, to require said clerk to give such security within one month, or that said office shall be then vacated, and it shall be the duty of such judge to fill such vacancy as in other cases.

Judges of the circuit and county courts to fill vacancies.

Sec. 4. *And be it further enacted*, That all sheriffs now elected, or hereafter to be elected or appointed under the constitution of this state, shall, before entering on the duties of their office, give bond with such number of good and sufficient securities as may be approved of by the county courts respectively, in such sum or sums, in addition to the sums already required by law, as they may deem necessary and proper, made payable to the governor for the time being, and his successors in office, which bond shall be taken by said court and deposited in the clerk's office: *Provided also*, That it shall be the duty of the

Sheriffs to give bond.

Proviso.

sheriff to renew his bond annually, if required by the county court.

Vacancies on failure, how filled. SEC. 5. *And be it further enacted*, That any sheriff failing or neglecting to comply with the provisions of the preceding section, shall vacate his office, and said office is hereby declared vacated; and such vacancies, should any such occur, shall be filled in such manner as is now prescribed by the constitution for supplying vacancies for sheriffs.

Repeal. SEC. 6. *And be it further enacted*, That the fourteenth and fifteenth sections of an Act to provide for the Appointment of County Officers, and for other purposes, passed at Huntsville, and approved the seventeenth day of December, eighteen hundred and nineteen, be, and the same are hereby repealed.

Office of clerks declared vacated in certain cases. SEC. 7. *And be it further enacted*, That any clerk of the circuit court, or clerk of the county court, who has been elected or appointed, or who may hereafter be elected or appointed, shall, whenever required by the judge of the county court, or judge of the circuit court, give such additional security as may be required by said judge of the county court, or judge of the circuit court, respectively, within one month after notice of such requisition: and in case any clerk shall fail to comply with the provisions herein contained, the office of said clerk is declared vacated thereby, and the vacancy shall be filled as in other cases provided by law.

CHAPTER XVIII.

An Act to provide for the Printing of the Laws and Journals, and for other purposes.—*Passed December* 25, 1822.

Printer to be elected. His salary. To give bond. SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That there shall be a state printer elected annually, by a joint vote of both houses of the general assembly, who shall receive a salary of eighteen hundred dollars for his services; and before he enters on the duties of his office, shall give bond with security to the governor for the time being, and his successors in office, in the sum of four thousand dollars for the faithful performance of his duty.

To print laws and journals. SEC. 2. *And be it further enacted*, That it shall be the duty of the printer so appointed, to print and publish the number of copies of the acts and resolutions of each session of the General Assembly, and as many copies of the journals of each house as may be directed by resolution of the general assembly.

Denomination of type. SEC. 3. *And be it further enacted*, That the acts and resolutions of the general assembly, shall be printed with type of the denomination of small pica, the marginal notes thereof affixed with brevier, and the captions thereof in italic of the size of small pica, and the journals of each house with small pica, and published as herein after directed.

Acts and resolutions to be copied.

How to be distributed.

Sec. 4. *And be it further enacted*, That the secretary of state shall, within ten days after the rising of the general assembly, deliver to the printer so elected, a fair copy of the acts and resolutions thereof, affixing thereunto proper marginal notes, stating the purport of each section; also, within twenty-five days thereafter, deliver to the printer a fair copy of the journals of each house of the general assembly, and also direct the printer in what manner and how the acts of the general assembly and the journals of each house are to be distributed.

Time allowed for distributing acts.

Journals.

Sec. 5. *And be it further enacted*, That within seventy-five days after the end of each and every session of the general assembly, the printer shall deliver to the clerk of the county or circuit court of each and every county in this state, the number of copies of the acts and resolutions as directed by the secretary of state, substantially stitched together in one pamphlet; also the number to be directed to be delivered to the secretary of state, with such number of copies covered with boards, as may be necessary for an interchange of laws with our sister states, as is hereinafter provided for: and the printer shall, within thirty-five days after the time given for the completion of the acts aforesaid, in like manner deliver the number of copies of the journals of each house as directed, collected and stitched together, the journals of each house in one pamphlet.

Number of acts to be retained in the executive office

Acts and resolutions, how distributed.

To whom distributed by clerks.

Journals, to whom distributed.

Sec. 6. *And be it further enacted*, That it shall be the duty of the secretary of state, to retain, for the use of the executive officers and the two branches of the general assembly, fifty copies of the acts and resolutions of each session, and shall cause to be transmitted to the secretary of state of the United States, four copies; and to the executive officers of the several states, each with a request that they send to the executive of this state, in exchange, as many copies of their laws or session acts; and shall direct a distribution to be made in the following manner, that is to say: To the comptroller of public accounts, one copy; to the treasurer of the state, one copy; one to each of the judges of the supreme court; one to the attorney general; one to the quarter master general; one to each solicitor; and to the clerks of the several courts of the several counties in the state, in proportion to the population of each county, agreeably to the enumeration last before made; and the clerks of the several counties shall, upon the receipt of said pamphlets, distribute the same in the manner following, to wit: To each member of the general assembly from the county, one copy; and to each and every civil officer, one copy; and the secretary of state shall also retain fifty copies of the journals of each house for the use of the executive and general assembly, and shall direct the residue to be distributed to the several officers of the state herein before mentioned, one copy each; one thereof to the secretary of the senate; one to the clerk of the house of representatives; and to the clerks of the several circuit courts of the several counties, in proportion to the population of each; and the clerks of the counties respectively shall distribute the same as follows: to each member of the general assembly from the county, one copy; and to each justice of the peace, one copy.

Public printer—salary when received.

SEC. 7. *And be it further enacted*, That the public printer shall receive his salary in the following manner, to wit: One half on the delivery to the secretary of state, of the receipts of the clerks of the several county or circuit courts in this state, showing that the number of copies of acts and resolutions directed by law, was received by them respectively, within the time limited by this act for the delivery of them, and the number required by law to be deposited in the executive office; and the remainder on the delivery of the receipts of said clerks for the journals of the two houses, showing that the number of copies of the journals of each house directed by law, was received by them respectively, within the time limited by this act for the delivery of them, and his having deposited the number of said journals required to be deposited in the executive office: *Provided*, that the receipt of the judge of the county court of any county in which there may be no clerk of the courts aforesaid, or of the sheriff thereof, if there be no such judge, shall be as sufficient as the receipts of the said clerks.

Proviso.

Secretary of state to contract for blanks. How paid for.

SEC. 8. *And be it further enacted*, That the secretary of state is hereby authorized to contract for the printing of such blanks as may be wanting in his office; and the governor is authorized and required to draw on the contingent fund for such sum as may be necessary to pay for the same.

SEC. 9. *And be it further enacted*, That all acts and parts of acts, contrary to this act, are hereby repealed. This act shall be in force from and after the passage thereof.

Repeal. To commence.

CHAPTER XIX.

Resolutions to provide for the safe keeping of the State-House and Public Furniture.—*Passed January* 1, 1823.

Secretary of state to appoint a person to take charge of state-house.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That the state-house and furniture of every description belonging to the same, be committed to the care of such person as may be appointed by the secretary of state, who shall be required to execute his receipt to the secretary of state for all the property which may be committed to his care, with a description of the situation and order of the same: and the said person is hereby required to surrender the same on the first day of the next session of the general assembly, in the same order and condition in which he may have received them.

And, be it further resolved, That the sum of ——— dollars be, and the same is hereby allowed the said person for his services as aforesaid: *Provided*, it shall be the duty of the door-keepers of the two houses to deposite the whole of the furniture in the senate chamber, and deliver the key to the secretary of state.

CHAPTER XX.

Resolution concerning the Manuscript Digest of the Statutes of this State.—*Passed January* 1, 1823.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That the secretary of state be authorized and required to receive and keep the manuscript copy of the statute laws of this state, digested and prepared by Harry Toulmin, Esq. until the same shall be demanded by the governor of this state, or by some person duly authorized by him to receive the same.

LEARNING AND RELIGION.—1811.

CHAPTER I.

Extract from the Ordinance of Congress.

Art. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools, and the means of education shall for ever be encouraged.

The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Extract from the Constitution of the State of Alabama.

EDUCATION.

Schools and the means of education shall for ever be encouraged in this state, and the general assembly shall take measures to preserve from unnecessary waste or damage, such lands as are or hereafter may be granted by the United States for the use of schools within each township in this state, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant.

The general assembly shall take like measures for the improvement of such lands as have been, or may be hereafter granted by the United States to this state, for the support of a seminary of learning, and the moneys which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and remain a fund for the exclusive support of a state university, for the promotion of the arts, literature, and the sciences: and it shall be the duty of the general assembly, as early as may be, to provide effectual measures for the improvement and permanent security of the funds and endowments of such institution.

CHAPTER II.

An Act establishing an Academy in Washington County, by the name of Washington Academy.—*Passed December* 17, 1811.

Washington academy.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That there shall be established in Washington county an academy, which shall bear the name of "Washington Academy."

[SEC. 2. Appoints Trustees.

SEC. 3. Provides for the first meeting.]

Board of trustees to fix on some convenient situation for the academy, and to contract, &c. To engage a president and professor.

SEC. 4. *And be it further enacted,* That the board of trustees shall have power and authority to fix on some convenient situation, whereat to establish the academy, and to contract for erecting the necessary buildings. They shall also have power to engage a president and other professors, and all other officers necessary for conducting the civil and literary concerns of the academy, and to displace and supersede them at pleasure. They shall have power and authority to examine the proficiency of the students; and to make all laws and regulations which they shall judge necessary for the good government of the academy, and for promoting morality and virtue among the students.

In case of death, &c. of trustees, a board to appoint others.

SEC. 5. *And be it further enacted,* That in case of death, removal from the territory, resignation, or refusal to act, of any of the trustees, the board may at any of their meetings appoint a successor.

Free of tax.

SEC. 6. *And be it further enacted,* That the lands, public buildings, and other property belonging to the Washington academy, are hereby declared to be free from any kind of public tax.

Lottery.

SEC. 7. *And be it further enacted,* That the trustees be, and they are hereby authorized to raise by way of lottery (for the benefit of said academy,) a sum not exceeding five thousand dollars, in such scheme or plan as they may deem most advisable.

CHAPTER III.

An Act to amend an Act, entitled "An Act establishing an Academy in Washington County, by the name of Washington Academy.—*Passed December* 24, 1814.

Washington academy.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That there shall be established in Washington, or

Clarke county, an academy, which shall bear the name of "Washington Academy."

SEC. 2. *And be it further enacted*, That the following persons, viz.—Lewis Sewall, James Caller, George S. Gaines, Joseph Phillips, Thomas Malone, Joseph Carson, Thomas B. Creagh, Benjamin S. Smoot, Reuben Saffold, Benjamin I. Biddill, and John Dean, shall be a body corporate, by the name of "The Trustees of Washington Academy," and by that name shall be capable in law to sue and be sued, plead and be impleaded, and receive all donations, and recover all debts, which may become the property of the said academy, and may in general do all acts for the benefit of the institution, which are incident to bodies corporate. Trustees.

SEC. 3. *And be it further enacted*, That the first meeting of the trustees shall be held on the first Monday in February next, at the town of St. Stephens, in the county of Washington, when they shall proceed to choose out of their own body a president and vice-president. The president, or in his absence the vice-president, shall have power to call extraordinary meetings of the trustees, by giving at least ten days notice, by advertisement in some newspaper published in the territory, or at three or more public places in each of the counties of Washington and Clarke. The ordinary meetings of the board shall be held on their own adjournments; nine members shall constitute a quorum to do business at the first meeting, but at all subsequent meetings seven shall constitute a quorum to proceed to business. The president, or in his absence, the vice-president shall preside; or in case of the absence of both, any member chosen by a majority of the members present shall preside. First meeting of the trustees—when and where to be holden. Extraordinary meetings.

SEC. 4. *And be it further enacted*, That the first, second, and third sections of the act to which this act is amendatory, be, and the same is hereby repealed.

CHAPTER IV.

An Act to Establish an Academy in Madison County.—*Passed November 25, 1812.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That there shall be established in Madison county an academy, which shall bear the name of "Green Academy." Green academy.

SEC. 2. *And be it further enacted*, That the following persons, to wit:—William Edmonson, John Brahan, William Lesley, James M'Carty, Peter Perkins, Charles Buris, William Derrick, James Neely, John Grayson, Henry Cox, Bennett Woods, Samuel Allen, Andrew K. Davis, William Evans, and Nathan Power, shall be a body corporate, by the name of "The Trustees of Green Academy," and by that name shall be capable in law to receive all donations, and recover all debts which may become the property of said academy, and may in general do all acts for the benefit of the institution, which are incident to bodies corporate. Trustees.

First meeting.

SEC. 3. *And be it further enacted*, That the first meeting of the trustees shall be holden on the Saturday preceding the third Monday in April next, at the court-house of Madison county, when they shall proceed out of their own body to choose a president and vice-president; and in case a sufficient number of trustees should not attend at the time appointed for their first meeting, then, and in that case, it shall be in the power of any three members to call a meeting of the trustees aforesaid, by advertisement in the Madison Gazette, or at three or more public places within the county, at least ten days before the time of said meeting. The president, or in his absence the vice-president, shall have power to call all extraordinary meetings of the trustees, by giving notice as aforesaid; the ordinary meetings of the board shall be held on their own adjournments; nine members shall constitute a quorum to do business at the first meeting; but at all subsequent meetings five shall constitute a quorum to proceed to business. The president, or in his absence, the vice-president shall preside, or in case of the absence of both, any member chosen by a majority present, shall preside.

SEC. 4. *And be it further enacted*, That the board of trustees shall have power and authority to fix on some convenient situation whereat to establish the academy, and to contract for erecting the necessary buildings; they shall also have the power to engage a president, and other professors, and all other officers necessary for conducting the civil and literary concerns of the academy, and to displace and supersede them at pleasure; they shall have power and authority to examine the proficiency of the students, and to make all laws and regulations they may think necessary for the good government of the academy, and for promoting morality among the students.

Successor.

SEC. 5. *And be it further enacted*, That in case of death, or removal from the territory, resignation, or refusal to act, the board may at any of their meetings appoint a successor.

SEC. 6. *And be it further enacted*, That the lands, public buildings, and other property belonging to the Academy of Green, are hereby declared to be free from any kind of public tax.

Lottery authorized.

SEC. 7. *And be it further enacted*, That the trustees be, and they are hereby authorized, by way of lottery, for benefit of said academy, to raise a sum not exceeding four thousand dollars, on such scheme or plan as they may deem most advisable.

CHAPTER V.

Extract from an Act to amend the Act, entitled "An Act to establish a College in the Mississippi Territory."—*Passed December* 13, 1816.

Loan to Jefferson college.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That for the purpose of aiding Jefferson college in carrying on the operations of the institution, the sum of six thousand dollars shall be, and the same is hereby loaned to said college for the term of five years. And there is also hereby given and granted to the Green academy and the St. Stephens academy, each, the sum of five hundred dollars, to be paid out of the territorial treasury, on the auditor's warrant, which warrant he is hereby required to issue on the order of the president of said academies respectively.

Donation to Green and St.Stephens academy.

NOTE.—The rest of this act relates to Jefferson college.

CHAPTER VI.

An Act to incorporate the President and Trustees of the St. Stephens Academy. *Passed February 7, 1818.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That the following persons, viz.: Silas Dinsmoor, Samuel Smith, George Buchanan, Benjamin S. Smoot, Lemuel J. Allston, Davis H. Mayhew, Matthew D. Willson, and Abner S. Lipscomb, trustees of the St. Stephens academy, and their successors in office, are hereby constituted a body corporate, under the style and title of the president and trustees of the St. Stevens academy.

Present trustees and their successors incorporated.

SEC. 2. *And be it further enacted,* That the president and trustees, and their successors in office, shall have and exercise the authority to make all such by-laws, not contrary to the constitution or laws of the United States, or of this territory, for the better regulation of the said academy, and the same from time to time to alter, amend, and annul, as to them may seem expedient; and be capable in law of suing and being sued, of pleading and being impleaded, and shall be capable of holding property, both real and personal, and of selling or aliening and conveying the same, and shall have and enjoy all the privileges and rights incident to bodies corporate.

Powers given to the president and trustees.

CHAPTER VII.

An Act to authorize the leasing of Lands therein named.—*Passed November 21, 1818.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That the governor of this territory be, and he is hereby authorized to appoint three commissioners, with powers to let or lease until the first day of January, eighteen hundred and twenty, such lands as have been or may be granted by the United States to this territory, for the support of a seminary or seminaries of learning.

Appoint commissioners.

SEC. 2. *And be it further enacted,* That the commissioners to be appointed in pursuance of this act, shall, before they enter on the duties required of them, give bond and security to the governor, in such sum as he may prescribe, for the faithful performance thereof, which bond may be given in presence of any judge or justice of the quorum, in this territory, to be by such judge or justice of the quorum returned to the office of the governor.

Payable to the governor.

SEC. 3. *And be it further enacted,* That all bonds or notes given for the consideration of any lease herein contemplated, shall be made payable to the governor, for the use of the territory, and may in his name be sued and recovered; and all sums of money arising under the provisions of this act, shall be set apart, and shall constitute a fund for the purpose of education exclusively.

CHAPTER VIII.

An Act to provide for leasing for a limited time the Lands reserved by the Congress of the United States, for the support of Schools, within each Township in this State, for a Seminary of Learning, and for other purposes.—*Passed December* 17, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall be the duty of the chief justice of the county court, in each county in this state, as soon as may be after the passage of this act, to appoint two proper persons in each township or fractional township, within their respective counties, whose duty it shall be, giving ten days previous notice of the time and place thereof, to hold an election within the same; at which time and place, there shall be elected, by the qualified electors therein, three agents, who shall continue to discharge the duties herein after prescribed, for the term of three years from the date of their election, and until their successors shall be elected: should vacancies occur by death, resignation, or removal, of any of the agents, the same shall be filled by elections as aforesaid; the like notice of the time and place being given by the remaining agent or agents, or where there shall be no agent, by the chief justice as aforesaid; and the agents so elected shall, at the expiration of each and every term, hold or cause to be holden, an election as aforesaid for three successors.

Three agents to be elected in each township.

Power of agents.

SEC. 2. *And be it further enacted,* That the said agents shall have power to let out on lease, for the purpose of improving the same, or to let out at annual rent, as they may think proper, the sections of land reserved by congress for the support of schools, within each township in this state: *Provided,* that public notice shall be given by said agents, in five or more public places in the county in which such township may lie, of such intended leasing or renting: *And provided also,* That no lease shall be for a longer term than four years after the time of leasing: *Provided,* That all leases shall expire on the first day of January, and, that not more than one half of the land so leased shall be cleared.

To lay off lots not exceeding 80 acres.

SEC. 3. *And be it further enacted,* That the said agents shall have power to lay off the same into convenient lots, of not exceeding eighty acres each, except in cases of fractional sections. And in every lease which shall be made, the lessee shall be bound in a suitable penalty not to commit waste on the premises, by destroying timber or removing stone, or any other injury to the lands whatsoever, and shall also be bound in sufficient penalty, that he will make such improvements on the lands as shall be deemed proper by said agents. All obligations, given by the lessee for the payment of rent; shall be in the name of the agents, for the use of the inhabitants of the township, and shall be recovered by them, for the use of the same by action at law, if necessary.

Lessee not to commit waste.

SEC. 4. *And be it further enacted*, That the said agents shall have power within their respective townships, by legal process to remove any person or persons from the reserved sections, when such person or persons have not taken a lease for the same, or shall neglect, or refuse, to deliver quiet and peaceable possession of the premises, when his, her, or their lease shall have expired; they shall also inspect and inquire into any waste or trespass committed on any of the reserved sections aforesaid, by cutting or carrying off timber or stone, or any other damage whatsoever, whether by persons residing thereon, or others; and the agents or a majority of them, are hereby authorized and required, when waste or trespass shall have been committed, to proceed against the person or persons aggressing according to the laws in such cases made and provided; and actions on the case aforesaid, shall be sustained by the whole, or a majority of the agents of the townships respectively; and the damages recovered shall be applied to the same purposes, as the proceeds of the rents from the lands, on which the damages were sustained.

Agents may remove intruders.

SEC. 5. *And be it further enacted*, That the agents shall contract with a teacher or teachers, and for a school-house or houses, when and wheresoever they may think proper within the township; and the agents aforesaid are hereby made the trustees of such schools, and are vested with all necessary power for the general superintendence, due organization, and well being of every such school or schools, applying with impartiality the proceeds of each section to the purposes of education alone, within the particular township of six miles square, or fractional township within which such section is situated, in such manner, that all the inhabitants therein may partake of the benefits thereof, according to the true intent of the reservation.

Agents to contract with teachers.

SEC. 6. *And be it further enacted*, That it shall be the duty of the county courts or chief justices, respectively, as soon as may be, after the election of said agents, to take their several obligations with good and sufficient securities, for adequate sums of money, conditioned for their faithful performance of all the duties severally assigned, and made payable to the chief justice of said court, who, upon neglect or failure of any of said agents, shall put his or their obligation in suit; and if such action or actions be bottomed on neglect, so as to recover damages only, the one half of such damages shall go to the chief justice, and the other half to the inhabitants of the township which shall

Agents to give bond and security for the performance of duties.

have sustained the injury: but if such action or actions be predicated on pecuniary considerations, which have gone to the injury of the inhabitants of such township, by any such agent or agents, then and in that case, the other members of the county court shall issue an order to the treasurer of the township, in favour of the chief justice for a sufficient amount to remunerate him for his expenditures, in the performance of the duties required of him, which amount the treasurer is hereby required to pay; and upon recoveries had by the chief justice, against any such agent or agents, for moneys originally due the people of such township, it shall be the duty of the chief justice to pay over the amount to the agent for the time being. And it shall be the duty of the county courts, also to know, by oath or otherwise, that the securities tendered in any case, are good and sufficient.

Agents to appoint treasurer.

His duties.

SEC. 7. *And be it further enacted*, That the agents at any time to be elected under this act, shall appoint one of their own body to act as treasurer, whose duty it shall be, to receive and pay over annually, to his successors, all moneys which may remain in his hands, after satisfying and defraying the expenses incident to establishing said school or schools, and to paying a teacher or teachers, and a statement of the same, together with a schedule of the number and size of the lots into which they may have divided the sixteenth section, the times and amounts for which they were severally leased or rented, and the persons with their securities, to whom they were rented or leased, to deposite in the office of the clerk of the county court.

Agents to take an oath.

SEC. 8. *And be it further enacted*, That said agent or agents shall, before they proceed to the discharge of the duties of their office, take and subscribe the following oath:—"I, —— ——, do solemnly swear (or affirm, as the case may be) that I will, to the best of my abilities, with honesty and fidelity, perform all the duties which by law are assigned to me, or may be assigned to me, as agent for the management of the sixteenth section, so long as I continue in the exercise thereof: So help me God." Which oath, together with their bonds, shall be deposited in the office of the clerk of the county court: *Provided*, That it shall be optional with the agents, to let the settlers, or improvers, remain on the sixteenth section, a time sufficient to remunerate them for their trouble, not exceeding three years from the first settlement thereof.

Settlers may remain on school lands three years for improving them.

Agent's duty when the 16th section is divided by county line.

SEC. 9. *And be it further enacted*, That in any case where the sixteenth section may be divided by any county line, it shall be the duty of the agents, from each county, elected or appointed as aforesaid, to act jointly for the government of any sixteenth section divided by county lines in the manner aforesaid.

Governor to appoint three commissioners of college lands.

Their duties.

SEC. 10. *And be it further enacted*, That the Governor be, and he is hereby authorized, to appoint three commissioners in each county, within which any portion of the two townships of land granted by congress for a seminary of learning, may have been, or shall be reserved, whose duty it shall be, to let or lease the same; which leasing may be done either publicly or privately, as the said commissioners may deem most advantageous to the state: *Provided*, The said lands be first offered for public leasing, in convenient tracts, until the first day of January, eighteen hundred and twenty-one.

Bonds of lessee payable to governor.

Sec. 11. *And be it further enacted*, That all bonds or notes, given for each and every such lease, shall be made payable to the governor for the use of this state, and may in his name be sued and recovered: and all sums of money arising from such leases, shall be set apart for the purposes of the seminary of learning aforesaid.

General assembly to elect five commissioners to select a site for university.

Sec. 12. *And be it further enacted*, That five commissioners shall be elected, by joint vote of both houses of the legislature, for the purpose of examining and reporting to the next session of the general assembly, the most eligible site for a state university, having due regard to the advantages of health, to the nature and situation of the surrounding country, and to the general convenience of the state; and if said commissioners, or any one of them, should be of opinion, that two or more places have equal, or nearly equal claims to their choice, they shall report the same with a correct description of each.

CHAPTER IX.

An Act making Appropriations for certain Persons therein named, and continuing in Office the present Trustees of School Lands in Madison County.—*Passed December* 17, 1819.

[Sections one and two expired.]

Trustees of school lands in Madison county to continue in office.

Sec. 3. *And be it further enacted*, That the present trustees, or a majority of them, of the school land of the county of Madison, be continued in office unless superseded by the commissioners hereafter to be appointed by law, who shall be authorized to rent for one year, the lands of, and employ teachers for, their respective townships, which trustees when superseded, shall deliver to their successors in office, all bonds, notes, &c. belonging to the townships.

CHAPTER X.

An Act to establish a State University.—*Passed December* 18, 1820.

University to be established.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That a seminary of learning be, and the same is hereby established, to be denominated "The University of the State of Alabama."

Commissioners appointed.

To lease.

Sec. 2. *And be it further enacted*, That three commissioners shall be appointed by the governor, within each county wherein any of the lands reserved by the United States for a seminary of learning may be situated, who shall enter into bond with sufficient security to the governor, and his successors in office, for the faithful performance of their duty, whose duty it shall be to lease the said lands, which leasing shall be for the term of one year from the first day of January next; and shall be done at public auction, offering the said lands in convenient tracts, and in such way as may be deemed most advantageous to the state, and also giving advertisement in the nearest public paper, of the lands so to be offered, at least two weeks previous to the offering of the same: *Provided*, that no improved land shall lease for a less price than two dollars per acre, for the said term of one year.

Minimum.

Lands to be surveyed.

SEC. 3. *And be it further enacted*, That the said commissioners are hereby authorized and required, as soon as may be, to employ the county surveyor, or some suitable surveyor, to admeasure the improved land as aforesaid, and to make report of the condition of the same, under the direction of the said commissioners, to be returned to them with a plat of the said improved lands; the expense to be paid out of the rent of the lands.

Duty of commissioners.

SEC. 4. *And be it further enacted*, That it shall be the duty of the commissioners appointed by virtue of the third section of this act, to take bond with sufficient security for every such lease, payable to the governor and his successors in office, and to deposite the same with the comptroller, and to take covenants from the several lessees against the commission of waste, or suffering the same to be committed; and for delivering possession at the expiration of the lease; and it shall also be the duty of the said commissioners to visit the several tracts reserved within their counties respectively at least once in every period of six months, for the purpose of preventing waste or trespasses from being committed; and it shall be their duty to give information of all waste or trespasses on said lands, to the solicitor of the circuit in which such lands shall be, whose duty it shall be to prosecute the same.

Trespass, how punished.

SEC. 5. *And be it further enacted*, That any person or persons who may, after the first day of January next, unlawfully enter upon, and destroy any timber or improvements, on any of the lands granted to this state for a seminary of learning, shall, on indictment and conviction, be fined in treble the amount of the damages, to be assessed by a jury, which fine shall be applied to the fund, herein before provided for the purposes of the said university.

Commissioners' compensation.

SEC. 6. *And be it further enacted*, That the commissioners appointed in virtue of the third section of this act, shall receive a commission of four per centum on the amount of all sums for which they shall return bonds taken by them for leases of lands, as full compensation for all services.

Rent, how recovered.

SEC. 7. *And be it further enacted*, That the same proceeding may be had, and before the same jurisdiction, for enforcing the payment of any of the bonds or securities, that may be taken in virtue of this act, as is authorized by law in the case of defaulting collectors of the public taxes, and it shall be the duty of the officer who prosecutes for the state, for the recovery of the revenue against defaulting collectors, to prosecute for the recovery of the arrears of rent under this act.

Fines, how disposed of.

SEC. 8. *And be it further enacted*, That all prosecutions under this act, shall be carried on as other prosecutions, in the name of the state of Alabama; and it shall be the duty of the solicitors of the several circuits in this state, upon information of said commissioners, to prosecute such offenders, and to receive the fines imposed by this act, and pay the same into the public treasury.

Sixteenth section, money due, how recovered.

SEC. 9. *And be it further enacted,* That all persons who hold or have received any rent, or money accruing on the sixteenth sections, previous to the first day of January, 1820, be, and they are hereby required to pay or deliver over the same to the agents of the sixteenth sections, in their respective townships, elected according to the provisions of the "Act to provide for Leasing for a limited Time the Lands reserved by the Congress of the United States, for the support of Schools within each Township in this State, for a Seminary of Learning, and for other purposes:" And in case of refusal or neglect so to do, the said agents are hereby authorized and directed to instruct the solicitors of their respective circuits to proceed to the recovery of the same; any law, usage, or custom to the contrary, notwithstanding. And the solicitors of the different circuits are hereby authorized and required to commence suit, agreeable to such instructions.

Commissioners to provide fences.

SEC. 10. *And be it further enacted,* That the commissioners appointed under this act, shall have the power to apply so much of the rent arising from any tract of cleared land as may be sufficient to put the same under a good and lawful fence: *Provided,* nothing in this act shall be so construed as to operate on any parcel of cleared land, which may be under a good fence at the time the same shall be offered for lease.

CHAPTER XI.

An Act to amend an Act to provide for Leasing for a limited Time the Lands reserved by the Congress of the United States, for the support of Schools within each Township of this State, for a Seminary of Learning, and for other purposes.—*Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, the agents of the school lands within each township in this state, shall have power to lease the same for any term not exceeding six years.

Six year's lease authorized.

SEC. 2. *And be it further enacted,* That all white male persons over the age of twenty-one years, who may reside in each township, at the time of the election of the agents, shall be deemed qualified electors, any law to the contrary notwithstanding.

Qualified electors.

CHAPTER XII.

An Act for the Relief of certain Lessees of the School Lands in Madison County.—*Passed December* 14, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the lessees of the sixteenth section, fourth township, and second range, Madison county, the term of whose leases expires with the present year, be authorized to retain possession of the same until the first day of January, eighteen hundred and twenty-two, without paying rent: *Provided*, the said lessees shall enter into bond with approved security to the acting trustees of the said sixteenth section, to deliver at the expiration of the year eighteen hundred and twenty-two, the houses in good repair, and the improved lands under good and sufficient fences.

CHAPTER XIII.

An Act to authorize Persons who have settled on the Sixteenth Section in each Township, to remove Mill-works or Machinery, and for other purposes.—*Passed December* 20, 1820.

Settlers on 16th section to remove mill-works.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That any person or persons who have settled on the sixteenth section in each township, shall be, and he, she, or they are hereby authorized to remove any mill, water-works, or other machinery, which may have been erected by him, her, or them, on the same: *Provided*, That the agents or commissioners of the sixteenth section, in each township, do not purchase the same, under such rules and regulations as are herein after specified.

Agents may buy mill-works.

SEC. 2. *And be it further enacted*, That the agents or commissioners of school lands in each township be, and they are hereby vested with the power and authority to purchase any mills, or other machinery erected by any settler on the sixteenth sections, on such terms as they may deem equitable and just. And the purchase money shall be paid by said agents or commissioners, out of the money arising from the rents or leases of the sixteenth section, on which such mill or machinery may be erected.

Provisions of this act to be extended to university lands.

SEC. 3. *And be it further enacted*, That the provisions of the foregoing sections shall extend to settlers on the seventy-two sections reserved by the state for the purposes of a seminary of learning.

CHAPTER XIV.

An Act to Incorporate the Trustees of the Solemn Grove Academy, in Monroe County.—*Passed December* 14, 1820.

Preamble.

Whereas sundry inhabitants of the county of Monroe, residing between Limestone and Flat creeks, have set forth by their petition, that the establishment of an academy in their neighbourhood would be productive of general utility, and conduce to the good order and happiness of society.

Trustees.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That Lark Abney, Stephen Andress, Daniel M'Intosh, John M'Leod, and Nathaniel Broughton, trustees of the Solemn Grove Academy, and their successors in office, appointed or elected, or to be appointed or elected according to the rules and regulations of the said academy, shall be, and they are hereby incorporated as a body politic and corporate, in deed and in law, by the name and style of The Trustees of the Solemn Grove Academy. Incorporation.

SEC. 2. *And be it further enacted*, That the said corporation, by their name aforesaid, shall have perpetual succession of officers and members, to be apppointed or elected in such manner and according to such form as may be prescribed by the rules and regulations now existing, or hereafter to be made for the government of said corporation; and they may have a common seal, with power to alter and make new the said rules and regulations, and the said common seal, as often as they shall deem expedient. Corporate powers.

SEC. 3. *And be it further enacted by the authority aforesaid*, That the said corporation shall be able and capable in law, to purchase, have, hold, possess, enjoy and retain to itself in perpetuity, or for any term of years, any estate, real or personal, of what kind or nature soever: and to sell, alien, or dispose of the same, as they may think proper: and by its name above-mentioned, to sue and be sued, implead and be impleaded, answer and be answered unto, in any court of law or equity in this state, and to make such rules and regulations not repugnant to the constitution and laws of this state, and of the United States, as they may deem necessary or expedient; *Provided*, That the said corporation shall not be entitled to have, hold, or retain, as aforesaid, real or personal estates of an annual income exceeding ten thousand dollars. Continued.

CHAPTER XV.

An Act concerning Persons residing on the University Lands, and who have not rented the same, and for other purposes.—*Passed June* 18, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That in all cases where any of the lands granted to this state by act of Congress for the purpose of a seminary of learning may be cultivated by any person, and who may not have rented the same, either at public auction or by private contract, of the commissioners appointed to rent the same, he, she, or they shall be bound, and is hereby made liable to pay the minimum price per acre as fixed by law, for each and every acre so cultivated, and the commissioners appointed to rent the same respectively, are hereby authorized and required to transmit to the comptroller of public accounts a list of the names of the person or persons, who may cultivate any of the lands aforesaid, describing the same by range, township, section, &c. together with the number of acres so cultivated by each and every person, who is hereby authorized to collect the same, in the same manner as is prescribed by law for the collection of money due the state.

SEC. 2. *And be it further enacted*, That so much of any law as authorizes the quarter-master general to deliver to the commandant of the Cahawba guards any number of the public arms of this state, be, and the same is hereby repealed.

CHAPTER XVI.

An Act supplementary to an Act to Establish a State University.—*Passed December* 18, 1821.

Trustees to be elected.

Term of office.

Incorporated.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That his excellency the governor, *ex officio*, together with twelve trustees, two of whom shall be elected from each judicial circuit by joint ballot of both houses of the general assembly, and who shall continue in office for the term of three years, shall constitute a body politic and corporate, in deed and in law, by the name of *The Trustees of the University of Alabama*, and by that name they and their successors shall and may have perpetual succession, and be able and capable in law, to have, receive, and enjoy to them and their successors, lands, tenements, and hereditaments, of any kind or value, in fee or for life, or for years, and personal property of any kind whatsoever, and also all sums of money of any amount whatsoever which may be granted or bequeathed to them for the purpose of promoting the interests of the said University.

To meet annually.

May call a meeting.

May elect officers.

Fix salaries.

Remove officers.

Prescribe course of studies.

Enact by-laws.

SEC. 2. *And be it further enacted,* That there shall be a stated meeting of the said trustees in each year, at the time of conferring degrees; and that the president of the said university, and four of the said trustees, shall have full power to call an occasional meeting of the board, whenever it shall appear to them necessary, and that at all meetings the president of the board of trustees aforesaid, and a quorum of the trustees, shall be capable of doing and transacting all the business and concerns of the said University, except what is herein after excepted; that they shall have the power of electing all the necessary and customary officers of the said institution, of fixing their several salaries, of removing any of them for neglect or misconduct in office, a majority of the whole number of trustees concurring in said removal; that they shall have the power of prescribing the course of studies to be pursued by the students, and of framing and enacting all such ordinances and by-laws as shall appear to them necessary, for the good government of the said university, and of their own proceedings: *Provided*, the same be not repugnant to the laws of the United States, and of this state.

Faculty; to enforce by-laws, &c.

May suspend students.

SEC. 3. *And be it further enacted,* That the head of the said university shall be styled *The President*, and the instructers thereof, *The Professors;* but professors, while they remain such, shall never be capable of holding the office of trustee; and the president and professors, or a majority of them, shall be styled *The Faculty of the University*, which faculty shall have power of enforcing the ordinances and by-laws adopted by the trustees for the government of the pupils by rewarding or censuring them, and finally by suspending such of them as after repeated admonitions shall continue disobedient or refractory, until a determination of a quorum of trustees can be had; but it shall be only in the power of a quorum of trustees at their stated meetings, to expel any student or students of the said university.

Trustees may expel students.

SEC. 4. *And be it further enacted*, That the trustees of the said university shall and may have a common seal for the business of themselves and their successors, with liberty to change or alter the same from time to time, as they shall think proper; and that by their aforesaid name, they and their successors shall and may be able to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts of law and equity within this state; and to grant, bargain, sell or assign, any lands, tenements, goods or chattels, in such manner as is herein after specified; and to act and to do all things whatsoever for the benefit of the said institution, in as ample a manner as any person, or body politic or corporate, can or may do by law.

Corporate powers.

SEC. 5. *And be it further enacted*, That no misnomer of the university of Alabama shall defeat or annul any gift, grant, devise, or bequest to the same: *Provided*, the true intent of the parties shall sufficiently appear upon the face of the gifts, grants, will, or other writing, whereby any estate or interest was intended to pass to the said university; nor shall any misuser, or nonuser of the rights, liberties, privileges, jurisdiction, and authorities hereby granted to the said university, create or cause a forfeiture thereof.

Misnomer not to defeat bequests, &c.
Proviso.
Misuser or nonuser not to forfeit rights, &c. granted.

SEC. 6. *And be it further enacted*, That the trustees, or so many as shall be fixed on by their by-laws, as aforesaid, shall have full power by the principal or professors of the said university, to grant or confer such degree or degrees in the arts or sciences to any of the students of the said university, or persons by them thought worthy, as are usually granted and conferred in other universities in the United States, and to give diplomas or certificates thereof, signed by them and sealed with the common seal of the trustees of the university, to authenticate and perpetuate the memory of such graduation.

Trustees may confer degrees on students.
May give diplomas.

SEC. 7. *And be it further enacted*, That no person shall be excluded from any liberty, liberties, immunity, office, or situation in said university, on account of his religious persuasion, *Provided*, he demean himself in a sober, peaceable and orderly manner, and conform to the rules and regulations thereof.

No person debarred office on account of religious persuasion.

SEC. 8. *And be it further enacted*, That his excellency the governor shall be, *ex officio*, the president of the board of trustees: *Provided, however*, that in case he should not attend the meetings of the said trustees, the trustees shall elect a president *pro tempore*, who shall preside at such meeting.

Governor, president ex-officio.
Proviso.
Trustees may elect president pro tem.

SEC. 9. *And be it further enacted*, That the trustees shall elect a treasurer, who shall continue in office for the term of three years, and who shall give bond in such penalty, and with such security conditioned for the faithful performance of his duty, as the said trustees shall direct: *Provided, however*,

Trustees to elect treasurer.
Term of office.
Give bond.

Compensation.

that the said treasurer shall receive, as compensation, five hundred dollars annually for his services.

Trustees to report to legislature site for university.

Legislature to make choice of site.

SEC. 10. *And be it further enacted*, That the said trustees shall have power, and it is hereby declared to be their duty, upon a notice from the president of the board, to examine and report to the legislature, at their next session, such place or places, having a due regard to health and the fertility of the surrounding country, as shall appear to them most suitable for the location of the university; and the legislature shall, at the session when such report shall be made, proceed by joint ballot of both houses of the general assembly to make a choice of the site for the university, which choice, when so made, shall not be subject to any alteration thereafter.

Site selected, reserved from sale.
Proviso.

Trustees may purchase site.

SEC. 11. *And be it further enacted*, That the site thus selected by the legislature, shall be exempted from the sale: *Provided*, the same shall have been granted to this state by an act of the Congress of the United States for a seminary of learning; and if the same shall not have been granted to this state as aforesaid, the trustees shall have full power to purchase the site thus selected.

May sell lots.

SEC. 12. *And be it further enacted*, That the trustees shall have the entire control over the site thus selected for the university, and may lay off and sell such lot or lots to such persons, and upon such conditions as they may think proper.

May erect buildings.

SEC. 13. *And be it further enacted*, That the trustees shall, so soon as the said selection shall have been made, as aforesaid, contract with a suitable person or persons for the erection of such buildings as they may deem necessary, for the purpose of carrying this act into complete effect.

Seminary lands vested in trustees.

Trustees may sell lands.

Proviso. Minimum price.

Condition of sale.

SEC. 14. *And be it further enacted*, That all the lands which this state has received as a donation from the Congress of the United States for a seminary of learning, shall be vested in the said trustees, who shall dispose of the said land in such manner as shall be best calculated to promote the object of said grant: *Provided, however*, that the minimum price on said land shall not be less than seventeen dollars per acre; *And provided further*, that one-fourth part of the purchase money shall be paid at the time of sale, and the remainder divided into four annual instalments.

Trustees to issue certificate to purchasers of land.

SEC. 15. *And be it further enacted*, That the said trustees of the university of Alabama, upon receiving from any purchaser of any tract or parcel of land, which they are authorized to sell as aforesaid, the one-fourth part of the purchase money, so required to be paid as aforesaid, shall issue to such purchaser a certificate, that the purchase of such tract of land has been made by such purchaser, that he has paid the fourth part of the purchase money, and declaring that upon the punctual payment of each and every one of the remaining instalments (the amount of each of which instalments shall be specified in such certificate,) they will convey such tract of land to such purchaser, or his heirs, executors, administrators, or assigns; and should such purchaser assign such certificate, the assignee shall possess all the rights which may have been vested in his assignor.

SEC. 16. *And be it further enacted,* That should any person who may purchase any tract of land from the said trustees as aforesaid, or the assignee of such purchaser fail to make punctual payment of the amount of any one of the instalments which may become due on said tract of land, the land shall be absolutely forfeited to the said trustees, with the money paid thereon; and the said trustees may, and they are hereby authorized, after the expiration of three months from the time of such forfeiture, to dispossess any person or persons who may be in possession of such tract of land, by the writ of unlawful detainer: *Provided,* that such purchaser or his assignee may, at any time within three months after the time at which the first instalment may fall due, which such purchaser or his assignee may fail to pay as aforesaid, execute a bond or bonds with good and sufficient personal security, for the payment of each of the instalments which may remain unpaid, by the times they shall respectively become due; and in such case, the land shall remain in the possession of such purchaser, his, or her assignee: *And provided also,* that should the said trustees be unable to collect the moneys which may become due on the bond or bonds which may be given in the manner herein before required, by reason of the insolvency of the obligors, or for other causes, then said trustees may direct an execution, which may be sued out on any judgment which they may recover on any such bond, to be levied on such land, which shall be sold by virtue of such execution; and said trustees shall convey such land to the purchaser at such sale, and the proceeds of such sale shall be applied in the first place to the payment of the whole amount which may be due to the said trustees for the said land, either by virtue of the judgment on which such execution may be sued out, or of any lands which they may hold for other instalments, and the remainder of such proceeds, after paying costs, &c. shall be paid over to such purchaser or his assignee, who may be entitled to receive the same.

Land forfeited if instalments not punctually paid.

To be sold at expiration of three months.

Proviso.

Not forfeited by giving bond, &c.

Proviso.

Trustees may bring suit, &c.

Excess to be refunded.

SEC. 17. *And be it further enacted,* That the said trustees shall have the power to appoint one, two, or three persons not of their own body, either of whom may make sale as the trustees direct, whose duty it shall be to attend to the examination and sales of all the lands, and to receive the money arising from the first payment, and to dispose of the same as the trustees may order and direct according to law: *Provided,* The said persons so appointed shall give bond and good security, to be approved of by said trustees, for the faithful performance of their duty, and that they shall receive such compensation as may be allowed by the said trustees.

Trustees may appoint persons to sell land.

Persons appointed to give bond.

Their compensation.

SEC. 18. *And be it further enacted,* That the trustees elected shall meet at the town of Tuskaloosa, on the first Monday of April next, and shall proceed to make the appointments contemplated by this act: *Provided,* That a majority shall make the appointments; *And provided also,* That the appointments

Trustees, when and where to meet.

To make appointments.

Hour of making appointments. shall not be made until two o'clock on the Thursday of said week, unless all the trustees elected shall meet previous to that time, then and in that case the appointments may be made sooner.

SEC. 19. *And be it further enacted,* That every trustee elected or appointed by the provisions of this act shall, before entering on the duties assigned him as trustee, take and subscribe the following oath, before some judge or justice of the peace, to wit: "I ——— ———, do solemnly swear (or affirm) that I will faithfully discharge the duties assigned me as trustee, to the best of my skill and ability, without partiality or affection: So help me God."

Oath to be taken by trustees.

Trustees to receive proceeds of sale of land. May vest proceeds. Report to legislature situation of finances.

SEC. 20. *And be it further enacted,* That the proceeds arising from the sales of the said lands shall be paid over to the trustees, and shall be by them vested in such funds as they may direct: *Provided,* It shall be their duty to report annually to the Legislature the financial situation of the said institution: *And provided further,* That the capital stock arising from the sale of the lands as aforesaid, shall not be reduced in any manner whatever.

Laws in relation to university land to continue in force.

SEC. 21. *And be it further enacted,* That the laws now in force relatively to the leasing of the said land, shall continue in force until the said lands shall be sold: *Provided,* That if they shall be sold previously to the first day of January, one thousand eight hundred and twenty-three, the lessee shall not be deprived of the benefit of remaining on the same until that time, and of receiving the growing crop.

Trustees to select site for female institution.

SEC. 22. *And be it further enacted,* That the said trustees shall have the power, and it is hereby declared to be their duty, to select a site for a female institution; which institution shall be considered as a branch of the University of the State of Alabama, and shall be governed by the same laws, so far as the same may be applicable.

Trustees to contract for buildings.

SEC. 23. *And be it further enacted,* That the said trustees shall have the power to contract for the necessary buildings, and to do every other act necessary to carry this act into complete effect.

Act deemed public.

SEC. 24. *And be it further enacted,* That this act shall be deemed a public act, and judicially taken notice of without special pleading, and the same shall be liberally construed, for fully carrying into effect the beneficial purposes hereby intended.

CHAPTER XVII.

An Act authorizing a Lottery for the benefit of building an Academy in the Town of Montgomery.—*Passed December 15, 1821.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall and may be lawful for Clement Freeny, Ebenezer D. Washburn, and William Graham, or a majority

Managers appointed.

of them who may take upon them the duties enjoined by this act, to raise by lottery, in one or more classes as to them may seem necessary, any sum not exceeding five thousand dollars, to be appropriated exclusively to the building of an academy in said town.

Sum to be raised.

SEC. 2. *And be it further enacted*, That the said Clement Freeny, Ebenezer D. Washburn, and William Graham, or such majority of them as may choose to serve, shall, before they enter upon the duties to them assigned in this act, enter into bond with sufficient security, payable to the governor for the time being, and his successors in office, before the judge of the county court of Montgomery county, conditioned for the faithful performance of all the duties of them required by this act, which bond, by the judge, shall be filed in the clerk's office of the circuit court of Montgomery county, and may be put in suit in the name of the governor of the state of Alabama for the time being, by any person or persons who may be injured by a breach of any of the provisions of this act.

Enter into bond.

May be put in suit.

SEC. 3. *And be it further enacted*, That it shall be the duty of the said persons, or such of them as may choose to act under this law, within ninety days after the completion of the drawing of the lottery aforesaid, to pay to the fortunate drawers in said lottery, or to his, her, or their legal representatives, such prize as may be due, agreeably to the scheme they may have determined upon and published.

Managers to pay prizes.

SEC. 4. *And be it further enacted*, That the said lottery shall be drawn at the town of Montgomery, in this state, and the said Managers shall, in some newspaper within the state, give due notice of the time and place of such drawing; which shall be conducted in such manner, and under such regulations and responsibilities, as to the aforesaid persons may seem most expedient: *Provided*, That each clerk or other person concerned in the drawing of said lottery, shall take an oath before some justice of the peace, faithfully and impartially to discharge their respective duties.

Lottery, where drawn.

Proviso.

SEC. 5. *And be it further enacted*, That should the said lottery or any class thereof, not be drawn within one year after the scheme thereof shall have been published, the same shall cease, and the purchasers of tickets may demand and recover of the managers named in the first section of this act, any money disbursed for tickets in said lottery.

Lottery, if not drawn in one year, to cease.

SEC. 6. *And be it further enacted*, That within a convenient and reasonable time after the lottery shall have been drawn, the commissioners acting under this act shall give public notice in some newspaper, and five of the most public places in the county, that the building of the academy will be let to the lowest bidder, who shall be the undertaker of the said building: *Provided*, He shall give to the said managers good and sufficient security for the faithful performance of the contract; and the said managers shall be authorized to make to the said undertaker such disbursements, and at such times, as they may think proper.

Notice to be given of letting building of academy.

CHAPTER XVIII.

An Act to establish an Academy in the Town of Sparta, and for other purposes: *Passed December 8, 1821.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That there be, and is hereby established, an academy at Sparta, in Conecuh county, to be known by the name of *The Sparta Academy*, under the superintendence of William Blackshar, Robert W. Carter, Martin H. Furlow, Benjamin Hart, Elias P. Muse, Philip Noland, Samuel W. Oliver, Mabry Thomas, Alexander Travis, Hinche Warren, and Thomas Watts, and their successors, who are hereby constituted a body corporate, to be known by the name and style of *The Trustees of the Sparta Academy*, and by that name, they shall be capable in law, to sue and be sued, plead and be impleaded, and receive all donations, and recover all debts which may become the property of said academy, and may in general do all acts for the benefit of the institution which are incident to bodies corporate.

Incorporated.

Powers.

To fill vacancies.

Elect president.

SEC. 2. *And be it further enacted,* That the said trustees and their successors shall have power to fill all vacancies in their body, by death, resignation, removal, or refusal to act; to appoint their president and other officers; to engage a principal rector, and such other instructers as they may deem necessary for conducting the literary concerns of the institution, and remove them at pleasure; to hold stated or called meetings for the purpose of examining the proficiency of the students, and to make all by-laws and regulations for the government of the seminary; and five of whom shall form a quorum capable of transacting business.

May raise money by lottery.

SEC. 3. *And be it further enacted,* That the said trustees be, and they are hereby authorized to raise by lottery, upon such scheme or plan as they may deem most advisable, the sum of two thousand dollars, to be appropriated to the building of said academy, and to create a contingent fund for the exclusive benefit of the institution.

When to meet.

SEC. 4. *And be it further enacted,* That the said trustees shall meet on the first Monday of March next, at the town of Sparta. and devise such scheme or plan for carrying said lottery into execution as they may think preferable, and when they shall have disposed of one half of the number of tickets of said lottery, they shall advertise in some public newspaper in this state, when and where the drawing will take place: *Provided,* the same be not postponed to a longer period than until the first Monday of November next.

Let building of academy.

SEC. 5. *And be it further enacted,* That as soon as the said trustees, shall have raised a sufficient sum of money to answer the intentions of this act, they shall proceed to let to the lowest bidder the building of said academy, after having given thirty days notice by advertisement, of the time and place of letting the same.

SEC. 6. *And be it further enacted*, That nothing herein contained, shall be so construed as to disqualify the said trustees from performing the duties herein assigned them, should their first meeting be within one month after the time herein prescribed.

SEC. 7. *And be it further enacted*, That in case the drawing of the lottery be not accomplished on or before the first Monday of November next, the said trustees shall refund to each person who shall have purchased a ticket or tickets in said lottery, the full amount by him or her expended for the same.

Lottery not drawn, money to be refunded.

CHAPTER XIX.

An Act to incorporate and empower Religious Societies of every Denomination to hold Real Estate.—*Passed December* 17, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That it shall be lawful for all persons who are, or hereafter may be, members of any religious denomination, to associate themselves into societies or churches, assume such name as they may think proper, and to adopt articles for their government, not inconsistent with the laws and constitution of this state; any of which churches may appoint deacons, class-leaders, elders, or trustees, at the pleasure of such church, to distinguish them, and may enter of record in their church book such articles of government, and the names of such leaders or trustees; which church may cause such articles of government, with the names of their leaders or trustees, to be recorded in the office of the clerk of the county court; whereupon, such church is declared to be a body corporate, and shall be capable of purchasing, receiving, and holding, by such leaders or trustees, lands not exceeding in quantity fifteen acres, together with the appurtenances thereto belonging, which church shall have, enjoy, and enforce all the rights, privileges, and powers of any other body corporate, in and over the lands and tenements aforesaid, for the harmonious and public worship of Almighty God: which lands and tenements shall descend in perpetuity to the use of such church and their religious successors, for the purpose aforesaid: *Provided always*, That when any church aforesaid shall be disposed to change the site for their meeting-house, such church, by their trustees, shall have power to sell and convey the same, and to purchase and receive titles for lands elsewhere, not exceeding fifteen acres.

Proviso.

CHAPTER XX.

An Act to authorize the Catholic Congregation of Christians, in the City of Mobile, to sell certain Real Estate therein mentioned, and for other purposes. *Passed November* 27, 1821.

Commissioners appointed.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That John B. Hogan, Terry M'Cusker, Diego M'Voy, Daniel Duvol, and Dominique Salles, be, and they are hereby appointed commissioners for the Roman Catholic congregation of Christians, in the city of Mobile, with full power and authority, after giving thirty days public notice in the newspaper published at Mobile, to sell at public sale, or at private sale, if the latter should best comport with the interests of the said congregation, (provided, however, that the property shall be first offered at public sale,) a certain lot of ground, situate on the west side of Royal-street, in said city, on which the church or chapel of the said congregation was long since erected, and which is now in a state of complete dilapidation; the proceeds or moneys arising from the said sale to be applied to the suitable erection or construction of a new church or chapel, designed and intended to be constructed on another lot of land in said city, appertaining to said congregation, and which, from its situation, it is deemed a more suitable place for the construction of a house dedicated to the worship of Almighty God; the overplus, if any, arising from the said sale, after defraying the necessary expenses, incident to the construction of such new church or chapel, to be paid over to said congregation.

To give 30 days notice of sale.

Proceeds of sale, how applied.

Overplus to be paid to congregation.

Commissioners to execute deeds, &c.

SEC. 2. *And be it further enacted,* That the said commissioners, or a majority of them, shall have, and are hereby vested with, full power and authority, to make and execute all such deeds, conveyances, or other instruments in writing, as may, in law, be needful or necessary, to assure and secure to the purchaser or purchasers, all the right, title, interest, and claim, both at law and in equity, which the said Roman Catholic congregation now have, or which they may hereafter have, in and to the said lot of land, in which their ancient church or chapel is built, and they, or a majority of them, are hereby vested with full power and authority to contract for, direct, and superintend for the said corporation, the construction of a new church or chapel.

May contract, &c. for new church.

To enter into bond.

SEC. 3. *And be it further enacted,* That the said commissioners, before they enter on their respective duties, shall enter into bond with good and sufficient security in the sum of three thousand dollars to Vincent Gener, the Catholic priest of said congregation, for the use of said congregation; conditioned, that they will correctly and faithfully discharge the trust reposed in, and confided to them, according to the provisions of this act; that they will well and truly account for all moneys to the said congregation, which may come into their hands, proceeding from the sale of the lot herein before mentioned; and, that they will pay over to said Gener for the use of the said congregation, any surplus fund which may be, or remain, in their hands, after completing the payment of the expenses incident to the construction of the new church, or chapel, immediately after the completion of the same.

Compensation.

SEC. 4. *And be it further enacted,* That the said commissioners shall be allowed such reasonable compensation for their services, as may be fixed and determined upon by the said Catholic congregation.

CHAPTER XXI.

An Act to repeal in part, and amend An Act, entitled "An Act supplementary to An Act, to establish a State University."—*Passed December 24, 1822.*

Term of office of trustees.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the present board of trustees of the university of Alabama, shall continue in office for the term of three years from the time of their election, and until their successors shall be duly elected and qualified.

Vacancies, how filled.

Proviso.

SEC. 2. *And be it further enacted,* That it shall be the duty of the general assembly to fill all vacancies in the board of trustees, which shall happen by the expiration of the term of service, death, resignation, or otherwise, at the next session after such vacancy shall happen: *Provided,* that should any vacancy happen during the recess of the general assembly, the board of trustees shall have the power to fill the same by an election, which shall continue until vacated by an election to be made by the general assembly at their next session.

Other trustees to be elected.

SEC. 3. *And be it further enacted,* That so soon as the site of the university shall be selected, there shall be six additional trustees elected by the general assembly, who shall reside within fifty miles of the university, and whose term of office shall expire with that of the present trustees.

SEC. 4. *And be it further endcted,* That at the expiration of the term for which the present trustees are elected, the legislature shall proceed to the election of six trustees, who shall reside within fifty miles of the university, and of two other trustees, from each judicial circuit within the state, who, together with the governor of the state, shall form the board of trustees and shall continue in office during the pleasure of the legislature: *Provided also,* that the six additional trustees to be thus chosen, shall have no power to vote upon the subject of any appropriation of the funds to be employed for the buildings to be erected in pursuance of this act, until six months after the same shall have been commenced.

Trustees to meet annually.

SEC. 5. *And be it further enacted,* That there shall be a stated annual meeting of the trustees, to be held at the time of conferring degrees, and that the president of the university, together with two of the trustees, or three of the trustees without the president, shall have full power to call an occasional meeting of the board, whenever it shall appear to them necessary: *Provided*, that reasonable notice by mail or otherwise be first given to all the other trustees, specifying the cause or causes of such meeting: *And provided also*, that no business shall be transacted by the board, other than that specially assigned as the cause of the meeting, unless at least seven of the board shall concur therein.

Proviso.

Majority may do business.

Sec. 6. *And be it further enacted*, That at all meetings of the trustees, a majority shall be capable of doing and transacting all the business and concerns of the university, except such as is herein excepted; they shall have the power of electing all the necessary and customary officers of said institution; of fixing their several salaries, and of removing any of them for neglect or misconduct in office, a majority of the whole number of trustees concurring in said removal: *Provided*, That no permanent election of any officer shall be made, or salary be fixed at any other than the stated annual meetings of the trustees; but all elections which shall be made at any called meeting, shall expire at the end of the next stated meeting; they shall have the power of prescribing the course of studies to be pursued by the students, and of framing and enacting all such ordinances and by-laws as shall appear to them necessary for the good government of the university and of their own proceedings; *Provided* the same be not repugnant to the laws of the United States and of this state.

May elect officers.

Proviso.

Style of the president and professors.

Sec. 7. *And be it further enacted*, That the head of the said university shall be styled the President; and the instructers, the Professors; and the president and professors, while they remain such, shall not be capable of holding the office of trustee: and the president and professors, or a majority of them, shall be styled "The Faculty of the University;" which faculty shall have the power of enforcing the ordinances and by-laws adopted by the trustees for the government of the students, by awarding or censuring them, and finally by suspending such of them as, after repeated admonitions, shall continue disobedient or refractory, until a determination of the board can be had. And it shall be in the power of a majority of the trustees present, at a stated meeting, to expel any student or students.

Land vested in trustees.

Sec. 8. *And be it further enacted*, That the title of the lands which this state has received as a donation from the congress of the United States for a seminary of learning, be, and the same is hereby vested in the said trustees and their successors in office, to be appropriated in the manner hereinafter directed, to wit: The said lands shall be sold at public auction, at such times and places as the said trustees shall direct, or have by ordinance heretofore directed, at a price not less than seventeen dollars per acre; one-fourth part of the purchase money shall be paid down at the time of sale; one-eighth part in one year thereafter, with interest, at the rate of six per cent. per annum; one-eighth part in two years after said sale, with interest as aforesaid; and the residue of the purchase money shall be paid at the

To be sold.

Minimum price.

Terms of sale.

Proviso.

May be sold in town lots.

Purchaser to execute bond.

expiration of eight years after said sale, with interest as aforesaid, payable annually, to commence at the day on which the third payment shall become due: *Provided*, That the said trustees shall have power to lay off town lots at any place they shall deem expedient, and to dispose of the same on such terms and under such regulations as they shall prescribe: *Provided*, That the said lots, when so laid off, shall not sell for a less sum than the minimum price herein expressed. And each and every purchaser shall, moreover, at the time of said purchase, execute his bonds, payable to the said trustees and their successors in office, conditioned for the true and punctual payment of the purchase money and interest thereon, according to the terms of said sale.

Trustees to give certificates to purchasers.

SEC. 9. *And be it further enacted*, That the said trustees, upon receiving from any purchaser of any tract or parcel of land which may be sold as aforesaid, the one-fourth part of the purchase money so required to be paid as aforesaid, and the bonds conditioned as aforesaid, duly executed, shall issue to said purchaser, a certificate under the seal of the trustees, that the purchase of such tract of land has been made by the purchaser, that he has paid one-fourth part of the purchase money, and that he has given bonds according to law, and declaring that upon the punctual payment of each and every one of the remaining instalments, with the interest thereon, the amount of each of which shall be specified in such certificate, they will convey such tract of land to such purchaser, his heirs or assigns; and should such purchaser assign such certificate, the assignee shall possess all the rights which may have been vested in his assignor: *Provided*, That the purchaser of any tract of land as aforesaid, his heirs or assigns, shall have the liberty at any time within the period of credit herein before given, if the land shall not have been forfeited, of paying to the said trustees the whole amount of principal and the interest then due upon said purchase; upon which payment, the said trustees shall convey to such purchaser, his heirs or assigns, a title in fee simple to said land.

Purchasers may pay the whole sum due previous to time specified.

Payment not made—land forfeited.

SEC. 10. *And be it further enacted*, That should any purchaser of any tract of land as aforesaid, the heirs or the assignees of such purchaser, fail to make punctual payment of the amount of principal and interest, or of interest which may become due on said tract of land, the said tract of land shall be absolutely forfeited to the said trustees, with the money paid thereon; and the said trustees may, and they are hereby authorized, after the expiration of three months from the time of said forfeiture, to dispossess any person or persons who may be in possession of such tract of land by the writ of unlawful detainer, saving, in every case of a forfeiture, the growing crop to the occupant: *Provided nevertheless*, That if the said trustees shall within the said period of three months institute a suit upon the bond given for the said purchase, in that case the said forfeiture shall not accrue until a failure of said suit to coerce the payment of the money due as aforesaid; which failure shall be ascertained by a

Proviso.

return of *non est inventus* to a *capias ad respondendum* or of *nulla bona* to a *fieri facias*.

Purchase may be converted into lease.

SEC. 11. *And be it further enacted*, That at the expiration of the term of credit, or within three months thereafter, herein before prescribed upon the sales of said lands, the purchaser, his heirs or assigns, shall have the right, upon the payment of all interest then due upon said purchase, and upon surrendering up the certificate of purchase, to convert said purchase into a lease for ninety-nine years, renewable for ever, upon condition that the lessee, his heirs, executors, administrators, or assigns, shall pay to the said trustees interest at six per cent. per annum, upon the amount of the original purchase money due at the time of converting said sale into a lease.

Trustees to execute deed of lease.

SEC. 12. *And be it further enacted*, That upon the election as aforesaid of any purchaser, his heirs or assigns, of any tract of land sold as aforesaid, to convert said sale into a lease as aforesaid, the said trustees shall execute to such lessee a deed of lease, specifying the terms thereof as aforesaid, which lease shall be assignable by said lessee, and the said assignee shall possess all the rights which may have been vested in his assignor.

May distrain for payment of interest.

Personal estate in preference to other debts, liable.

Interest not paid, lease forfeited.

Forfeitures to be sold by trustees.

Overplus to be paid to lessee.

Proviso.

SEC. 13. *And be it further enacted*, That the said trustees shall for ever have the right to distrain any personal estate belonging to the lessee, his heirs, assigns, or the tenant in possession of any tract of land so leased, for the payment of the interest as it shall become due on said lease, in such manner as shall be prescribed by law; and the personal estate of said lessee, his heirs, assigns, and the tenant in possession, shall always be liable in preference of other debts, for the payment of the interest due on the lease, and upon a failure of payment of the whole, or any part of the interest due on said lease, upon a *distringas*, for that purpose to be issued, the lessee, his heirs, or assigns, shall forfeit all right and interest in and to the land so leased, together with all sums of money which may have been paid for the purchase and lease of the same: And all lands thus forfeited, shall be sold by the trustees to the highest bidder, at public auction, for ready money, two months public notice being first given of the time and place of such sale, and after paying the amount due upon the original purchase, together with all interest due to the said trustees, up to the time of sale, with all costs and expenses of sale—the remainder, if any, shall be paid to the lessee, his heirs, executors, administrators, or assigns, who may be entitled to receive the same; and the person purchasing according to the provisions of this section, shall inure to all the equity, and be subject to the same rules as are herein before prescribed for original purchasers or lessees: *Provided*, that all land forfeited by a failure of the payment of either the purchase money or interest, shall never be sold for a less sum than is due and unpaid on said land, agreeable to the terms of the original sale or lease, (as the case may be,) and all forfeited lands which may be offered for sale, and shall not bring the amount due on account of the purchase money and interest, shall for ever remain the property of the trustees, and their successors in office, subject to the same rules and regulations as other lands belonging to the state university.

Trustees may rent land.

SEC. 14. *And be it further enacted*, That the said trustees shall have power to rent, from year to year, such part of the lands as shall not be sold at the public sales, as aforesaid, in such manner as they shall by ordinance prescribe, and the moneys which shall be due thereon, shall be recoverable in such manner as shall be prescribed by law.

To superintend sale.

Trustees may appoint agent.

SEC. 15. *And be it further enacted*, That it shall be the duty of the trustees, whenever a sale of lands is to take place, to appoint three of their own body, who, or any one of whom, together with such other trustees as may attend, shall be superintendents of said sale; and in case there shall be a failure of the agent to attend and conduct the sale, the trustees so attending, shall have power to appoint another agent, and to take his bond and approve of his security; and the board of trustees shall have power at all times, when they may deem it expedient, to remove any agent, and appoint another in his place.

Estate not liable to be taxed.

Officers, &c. exempt from military duty.

SEC. 16. *And be it further enacted*, That the estate, both real and personal, of the said corporation shall be free and for ever exempt from taxes, and the persons of all officers, servants, and students belonging to said university, shall, during their continuance there, be exempt from taxes, serving on juries, working on roads, and ordinary military duty.

Female institutions to be established.

How governed.

Proviso.

SEC. 17. *And be it further enacted*, That there shall also be established three branches of said university for female education, to be located at such places as may be deemed by the legislature most for the public good; and the legislature shall proceed to locate and fix the sites of said branches, at the same time, and by the same manner of election that the site of the principal university is to be located; and said branches shall each be governed by twelve directors, to be elected annually by the board of trustees; and the government thereof shall in all respects be according to the by-laws of the university, framed and ordained for that purpose: *Provided*, that not more than one hundred thousand dollars shall be appropriated by said trustees, for the purpose of erecting buildings for said branches.

Sum appropriated for erecting of buildings.

Certain sum to be vested in United States stocks.

SEC. 18. *And be it further enacted*, That a sum not exceeding fifty thousand dollars in the discretion of the trustees, of the moneys which may be received from the first payments of the lands sold, be, and the same is hereby appropriated and set apart, for the erection of the necessary buildings of the said university; and the interest arising from the last payments, to be made upon the sales of the lands as herein before provided to be sold, shall be set apart and vested, as the same may be received, in the stock of the United States, and applied exclusively to sinking the amount of money hereby appropriated to the erection of the buildings as aforesaid, until the amount so invested shall be equal to the sum which may be so expended.

after which the same shall be considered as capital stock, and shall never thereafter be diminished.

SEC. 19. *And be it further enacted*, That the residue of the sum, after deducting the sum which may be expended in the erection of the buildings as aforesaid, which may be received from the payments on the sales of the lands, shall be invested by the trustees without delay, as the same shall be, in such stocks of the United States, as the trustees may think most profitable: *Provided*, that a sum not exceeding one hundred thousand dollars, may in the discretion of the board, be invested in a state bank, if one shall be established, or in stock of the state, should such be created, and the sums so invested shall be considered capital stock, and shall never be diminished.

100,000 dollars may be invested in bank or state stock.

SEC. 20. *And be it further enacted*, That the interest to be paid by the purchasers of the lands, or the lessees as aforesaid, or which shall be received from the stock which shall be purchased, as herein before directed, or so much thereof as may be necessary, shall be appropriated by the trustees, to discharge the current expenses of the university, and the trustees shall report to the general assembly once in each year, the state of the funds committed to their charge, with such recommendations, with regard to the improvement thereof, as to them shall seem advisable.

Sum appropriated for payment of current expenses.

SEC. 21. *And be it further enacted*, That it shall be the duty of the treasurer and comptroller of public accounts, to deliver over to the treasurer of the board of trustees, on his application, all sums of money, and notes, and bonds which may be in possession of either of them, and which they have received from the rent of lands hereby vested in the trustees, or which they may hereafter receive, and the treasurer of the trustees shall give his receipt for the same; and the moneys so received shall be subject to the order of the trustees; and the trustees are hereby authorized to sue for and collect all sums which are now due, or which may hereafter become due from the notes or bonds which shall be so received by the treasurer of the said trustees, to be by them appropriated to the use of the university: *Provided*, that any moneys that are now in the hands of the comptroller or treasurer of public accounts, belonging to the state university, shall be subject to the call of the trustees, until the treasurer of the board of trustees shall be duly authorized to receive said moneys.

Money to be paid over to the treasurer.

Trustees may sue for and collect sums due.

Proviso.

SEC. 22. *And be it further enacted*, That the trustees shall also have the power to sue for and collect all sums of money which are now due, or which may hereafter become due from such persons as have or hereafter shall occupy any of the lands hereby vested in said trustees, without a lease from said trustees.

Repeal.

SEC. 23. *And be it further enacted*, That all acts and parts of acts contrary to this act be, and the same are hereby repealed.

SEC. 24. *And be it further enacted*, That the twenty-second section of the act to which this is an amendment, be, and the same is hereby repealed.

CHAPTER XXII.

An Act to prevent immoral and disorderly Conduct at Places of Religious Worship.—*Passed December* 10, 1822.

Preamble.

Sec. 1. *Whereas*, by the constitution of the state of Alabama, the citizens thereof have the right to worship God according to the dictate of their own consciences; and whereas, the people in assembling themselves for the purposes of religious devotion, are often disturbed by the disorderly conduct of wicked persons, for remedy whereof,

Persons guilty of misconduct shall forfeit, &c.

Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That if any person or persons hereafter, shall be found guilty of wilfully raising a riot, getting drunk, swearing, or any other act by which the congregations shall be interrupted, during the continuance of any meeting for the purposes aforesaid, all such person or persons, their aiders and abettors, shall on due proof thereof, forfeit and pay the sum of twenty dollars besides costs of suit; to be recovered before any judge or justice having competent jurisdiction: one half to go to the informer, and the other half to the county where such fine may be recovered.

Preamble.

Persons prohibited retailing spirituous liquors under a penalty, &c.

Sec. 2. *And whereas*, many individuals have been in the habit of retailing spirituous liquors at or near camp-meetings, thereby causing drunkenness and disorder, *Be it further enacted*, that if any person whatever shall hereafter retail spirituous liquors, or any kind of drink that is calculated to produce drunkenness, within two miles of any camp-meeting, quarterly-meeting, association, or any other religious meeting, during the continuance of any such meeting, such person or persons so offending, their agents or servants, on due proof thereof, shall, for each and every such offence, forfeit and pay the sum of forty dollars, besides costs of suit, to be recovered before any judge or justice having competent jurisdiction; one half to go to the informer, and the other half to the county where such fine may be recovered: *Provided nevertheless*, that this law shall not operate upon such persons who actually reside within two miles of such meetings, and who have obtained and hold a license for retailing.

Proviso.

CHAPTER XXIII.

An Act to allow the Trustees of the State University Pay for their Services.—*Passed December* 26, 1822.

Trustees of university, their compensation.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the trustees of the state university be, and they are hereby allowed the sum of three dollars each, for each day they may or have been engaged in their duties as trustees aforesaid; also the sum of three dollars for every twenty-five miles travelling to and from the place of their meeting.

Paid out of university funds.

SEC. 2. *And be it further enacted*, That said allowances be paid out of the university funds: *Provided*, that no trustee shall receive any compensation whatever, after the university has been organized and professors thereof appointed: *Provided, however*, that the said trustees who are members of the legislature, shall not receive any pay for their services as trustees, whilst they are in attendance as members of the legislature.

Proviso.

CHAPTER XXIV.

An Act to provide for Leasing the Sixteenth Sections, and for the Application of the Funds arising therefrom to the purposes of Education.—*Passed January 1*, 1823.

County court to appoint commissioners.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the court composed of the judge of the county court and the commissioners of the revenue and roads, of each and every county of this state, or the court which is or may be authorized to levy the county tax, shall, at their first session held after the first day of January next, appoint three freeholders or householders in each township in the county, (where the population of the township will admit thereof,) who shall be called school commissioners, each of whom, while he continues to reside in the township, shall continue in office for four years from the time of his appointment, and until his successors shall be duly qualified, according to the provisions of this act.

Townships contained in two counties, commissioners how appointed.

SEC. 2. *And be it further enacted*, That where a county line divides a township, the school commissioners thereof shall be appointed by the court aforesaid of the county containing the greater part thereof; and shall cause their reports and accounts to be rendered to such court, and shall in all respects, as to the objects of this law, be as completely within the jurisdiction and control of such court as if the whole township was within such county.

Commissioners to take oath.

SEC 3. *And be it further enacted*, That each of the school commissioners, appointed in pursuance of this act, before entering on the duties of his office, and within one month after his appointment, shall, before some judge or justice of the peace of this state, take and subscribe the following oath, and cause the same to be delivered to the clerk of the court aforesaid, whose duty it shall be to file and preserve the same in his office, to wit: "I do solemnly swear (or affirm, as the case may be,) that I will to the best of my skill and ability, and without partiality or favour, discharge the duties of school commissioner of township in range so long as I continue in said office: So help me God."

Vacancies filled by county court.

SEC. 4. *And be it further enacted*, That whenever a vacancy shall occur by the death, removal, or refusal to act, or disqualification of any of said commissioners from any other cause, the court aforesaid, so soon as the same shall be known to them, shall proceed to fill such vacancy; and in like manner whenever said court shall deem it expedient in and for any township in which such appointments shall not have been made, they shall proceed to make such; and each commissioner so appointed shall, under the restrictions aforesaid, hold his office for four years from the time of his appointment, and until his successor shall be duly qualified.

Acts of majority valid.

SEC. 5. *And be it further enacted*, That in all the official proceedings and contracts of said school commissioners, the acts of a majority, or of the one in office, if but one be in office, shall be in all respects as valid as if done by all three.

Commissioners to lay out section in lots.

SEC. 6. *And be it further enacted*, That the school commissioners of each township, as soon as practicable, shall, with the assistance of a skilful surveyor to be by them employed, and who shall act under their directions and instructions, proceed to lay out the section numbered sixteen, or such part thereof as they may deem expedient, into lots containing not less than forty nor more than one hundred and sixty acres, and make two plats of such survey; said commissioners shall select and mark on said plats such lot or lots as they may think proper to reserve from cultivation, for the benefit of the timber thereon; and said commissioners shall on said plats distinguish each lot by a number marked thereon, and retain one of said plats, and cause the other to be filed in the office of the clerk of the court aforesaid, for the inspection of all persons concerned.

Lots reserved for timber.

Lots reserved for benefit of lessees, &c.

SEC. 7. *And be it further enacted*, That the lot or lots so reserved for the benefit of the timber, shall, until otherwise directed by law, be for the common benefit of the lessees or tenants in said sixteenth section; but the timber thereon, or any part thereof, shall not be cut down, so long as there shall be sufficient on the other lots of the section respectively, of which matter said school commissioners shall determine, and may from time to time, by order, (to be recorded and reported with their other proceedings as hereinafter directed,) authorize the respective tenants on said section to cut down and remove timber from the lots reserved, in such quantities and for such person, towards the support of their respective tenements as said commissioners may deem consistent with the interest of their township.

Term of lease.

SEC. 8. *And be it further enacted*, That the school commissioners aforesaid shall, from time to time, at or before the expiration of the leases on said sections now in force, proceed to lease the several lots so laid out, except those reserved as aforesaid for timber: each lease shall be for a term not exceeding ten years, at the discretion of the commissioners, commencing on the first day of January: the commissioners shall require and stipulate for such improvements on the tenement or lot, as they may deem expedient, and may, in any case when they may think it necessary, require security for all rents and improvements; a rent shall be reserved to be paid annually on the first day of January, but where the value of the improvements to be made on the lot, in the opinion of the commissioners shall so require, they may stipulate that the annual rent shall commence and be payable at a certain period after the commencement of the lease: in all cases where improvements are required to be made, and in all other leases in which said commissioners deem it expedient, bond in such penalty as they shall prescribe, and such security as they may approve, shall be given and made payable to said commissioners and their successors, for the use of the township: the leases shall be offered at some place in the township, at public auction, to the highest bidder; at least six weeks previous notice of the time and place thereof shall be given, by advertisement put up at least at four public places in the township, and at the door of the court-house: and if the commissioners deem it expedient, in some neighbouring newspaper: by the terms of lease the lessees shall be bound to treat the land, houses, and improvements in a careful and husband-like manner: to commit no waste, and shall be under such further restrictions as to cutting timber, taking away stone, or in any other respect injuring the lot so leased, or the lot or lots reserved for timber as aforesaid, as said trustees may deem expedient. And if any such lessee, or person or persons claiming under him, shall commit any waste on the lot so leased, or the lot reserved for timber, or fail to pay said annual rent, such lease shall be forfeited if the commissioners so require: *Provided*, That the commissioners for the sixteenth section in township three, range eleven, west of the meridian of Huntsville, be authorized to lease said section, or any part thereof, for any number of years.

Lessees to commit no waste.

Proviso.

SEC. 9. *And be it further enacted*, That the school commissioners of each township who shall first act under authority of this law, within one month after their appointment, and the school commissioners of each township, from time to time, as they may deem it expedient, shall give ten days notice by advertisement at three or more public places in the township, requiring all parents and guardians residing therein, to make known to them or one of them, the number of pupils which such parents or guardians respectively wish to enter at school; and said commissioners shall moreover collect such information from such other sources as may be in their power: they shall then proceed to divide the township into convenient school districts, so that each district shall contain not more than forty, nor less than thirty scholars, or as near that number as may be practicable.

Notice to parents.

Townships divided into school districts.

SEC. 10. *And be it further enacted*, That on application to the school commissioners by any three or more freeholders or householders residing in any such school district, they shall issue their warrants directed to one of the persons so applying, to warn all the inhabitants of each district qualified to vote at general elections under the constitution of this state, to meet at a certain time and place in the township named in said warrant, to vote for three trustees of said school district; notice of the time, place, and object of such election shall be given by advertisement, which the commissioners shall cause to be set up at two or more public places in the district, at least fifteen days before such election, and notice, so far as the same can conve-

Trustees elected.

Elections, how conducted.

niently be done, shall also be given by the person to whom the warrant aforesaid shall be directed, to the several voters of each school district, personally, or by leaving the same in writing at their respective dwellings, the commissioners shall appoint two judges and a clerk of said election, who shall each, before some judge or justice of the peace, swear (or affirm) that he will faithfully and impartially execute the duties of said appointment: the clerk shall keep a fair list of all the votes taken; the list and return of the election shall be subscribed by said judges and clerk, and trasmitted to the commissioners of the township, who shall decide in cases of contested elections; the trustees so elected shall continue in office for two years from the time of such election, and until their successors shall be elected: *Provided*, they shall, during that period, continue to reside in the district. Vacancies which may occur by removal, expiration of the term of office, or other cause, shall in like manner be filled by elections, notice thereof to be given, and to be conducted as aforesaid; and in all official proceedings and contracts of the trustees of a district, the acts of a majority, and if but one be in office, the acts of that one, shall be in all respects as valid as if done by all the three.

Return of, to whom made.

Term of office.

Vacancies, how filled.

SEC. 11. *And be it further enacted*, That the said school commissioners of each township, and said trustees of each school district, for the time being, and their successors respectively during their continuance in office, shall be and are hereby constituted bodies corporate, and by said corporate name may sue and be sued; and said trustees shall have power to hold in trust, for the purposes of education, real estate in their respective townships, not exceeding two acres, and personal estate not exceeding the value of five hundred dollars, to them and their successors in office, for ever: and in all cases where it shall be necessary for the school commissioners of a township or trustees of a school district, to contract, appear, or act in their corporate character, any deed, warrant, or other writing executed by them, or a majority of those acting, or by any one acting solely under the provisions of this act, shall be in all respects as valid and effectual in law as if the same were executed under their common seal as a corporation.

Commissioners and trustees bodies corporate.

Acts of majority declared valid.

SEC. 12. *And be it further enacted*, That the school commissioners shall have power to appoint and discharge at pleasure a clerk and treasurer. The clerk shall record the proceedings of the commissioners, file and preserve such papers as they may direct, and furnish the treasurer from time to time with a statement of the debts and moneys which such treasurer may be authorized to receive. The clerk shall, moreover, on the first day of the first session of the court aforesaid, held after the first day of January in each year, transmit to said court a statement of the proceedings of the commissioners for the twelve months next preceding, and of the school lands and funds of the township, setting forth the lots leased, or to be leased, dates of the leases, name of the lessees or tenants in possession, rates of rent, amount thereof paid, or remaining due and unpaid,

Commissioners may appoint clerk and treasurer.

Duties of clerk.

and the steps taken for the recovery of the same, amount of debts due to the township, amount of funds in hand, sum allotted to each school district, and amount thereof paid out by the treasurer, name of the teachers for the last twelve months in the different districts, and terms of their engagement, number of pupils at school in each district, number paid for out of the school funds, sums appropriated for the purchase of ground, building school-houses, or for other objects connected with the schools: on failure of any such township clerk to transmit a statement as aforesaid, said courts, respectively, are hereby empowered to compel such clerk by process of attachment or otherwise, to bring before them the above described records. The treasurer shall give bond in such penalty as the commissioners shall prescribe, with approved security, payable to them and their successors in office, conditioned that he shall faithfully perform the duties of his appointment, account for and pay over according to law and the regulations and orders of said commissioners and trustees respectively, all moneys which he shall receive by virtue of said appointment: it shall be the duty of such treasurer to receive all moneys which may become due for rents, or in any other way accruing to the school fund of the township, or of any school district therein; to keep fair and regular accounts, and on or before the first day of January in each year, to deliver to said commissioners of the township, or their clerk, a statement thereof for the twelve months next preceding, showing the several sums received and paid out, vouchers therefor, the debts remaining due and unpaid for rent or otherwise, and the balance remaining in his hands; which balance he shall at the same time produce before said commissioners.

Duties of treasurer.

Commissioners may apportion funds among districts.

SEC. 13. *And be it further enacted*, That the commissioners of each township shall annually, at a meeting by one of them to be called for that purpose, apportion the funds then in hand among the several school districts therein, in proportion to their respective numbers of pupils entered to school for the preceding year as aforesaid, and their clerk shall forthwith furnish the treasurer with a copy of such order of apportionment.

Trustees to employ teachers.

SEC. 14. *And be it further enacted*, That the said trustees of each school district, shall have power to employ a teacher or teachers for the same, at an annual salary, or at a stated price for each scholar, or on such other terms as they may deem expedient; to cause a school-house to be built and kept in repair; to purchase books and stationary for the use of the school; and make regulations for the use and preservation of the same, and for the admission of pupils into the school; to designate the pupils who shall be admitted to the school without tuition fees. No teacher shall be employed by any of the said trustees, until he shall have been duly examined by the commissioners of the township, and shall produce their certificate of his qualification, and that they are satisfied he is of a moral character. The clerk of the commissioners shall keep a list of the persons to whom, and dates when, such certificates are given. The

Teacher to be examined by commissioners.

trustees shall have power by order or warrant on the treasurer of the township, to direct such moneys as may be required for any of the purposes as aforesaid, to be paid out of said school fund of the district.

Contributions paid to treasurer.

SEC. 15. *And be it further enacted,* That should the trustees of any school district raise moneys in aid of their school funds, by subscription or otherwise, and direct the same to be paid to the township treasurer, he shall receive and keep an account thereof, report the amount to the township clerk, appropriate the same as the said trustees may direct, and he and his securities shall be liable for all defaults as to the same, as fully as if it were set forth in his bond aforesaid.

Clerks to transmit abstracts to general assembly.

SEC. 16. *And be it further enacted,* That the clerk of each of the courts aforesaid shall transmit to the general assembly, within the ten first days of each stated annual session, an abstract of the last annual statements made to said court pursuant to the twelfth section of this act, setting forth the amount of rents of school lands in each township; amount paid; amount due and unpaid; number of school districts; amount of funds allotted to each; amount of funds raised by subscription or otherwise; amount of compensation paid to each teacher; number of pupils in each particular district, and what number are educated gratis: and on producing to said court the receipt of the clerk of the house of representatives for such statement, he shall be allowed by the court aforesaid, for said service, a sum not exceeding five dollars, to be paid out of the county treasury.

Repeal.

SEC. 17. *And be it further enacted,* That so much of the act entitled An Act to provide for Leasing for a limited Time the Lands reserved by the Congress of the United States for the support of Schools within each Township in this State, for a Seminary of Learning, and for other purposes, and of all other acts contrary to the provisions of this act, is hereby repealed: and the agents designated by said act shall pay over and deliver to said commissioners of their respective townships, so soon as they shall be qualified to office, all moneys, obligations, evidences of leases, and other contracts and accounts remaining in their custody respectively, by virtue of said recited act. Said commissioners shall cause a statement thereof to be recorded, and shall deposite said moneys with their treasurer. All debts due and accruing to said agents of any township, and all actions, rights, and causes of actions heretofore vested in them, shall be, and are hereby vested in the commissioners of such township; and suits therefor may be instituted or prosecuted in the names of said agents or of said commissioners, as they may deem expedient; and the contracts heretofore made, and debts contracted by said agents, under the authority of the act aforesaid, shall be as binding on such commissioners as on said agents; and said commissioners may order the same to be paid out of the general school fund of the township.

Former agents to pay over to commissioners.

CHAPTER XXV.

An Act to incorporate the Jefferson Academy, in the town of Elyton, and for other purposes.—*Passed December* 30, 1822.

Academy established and incorporated.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That an Academy be, and is hereby established in the town of Elyton, in Jefferson county, by the name of the Jefferson Academy, and that Anthony Labuzan, John Wood, John Brown, (Red.) William K. Paulling, Darby Henly, Peyton King, John S. Doxey, Benjamin Mattison, Isham Harrison, Stephen Hall, Isaac Browne, and William Roupe, their associates and successors be, and are hereby constituted a body corporate, by the name and style of "The Trustees of the Jefferson Academy," and by that name shall have power to sue and be sued, to plead and be impleaded, to receive donations, to hold real estate to the value of ten thousand dollars, and in general to do all acts for the benefit of the institution which are incident to bodies corporate, and which are not repugnant to the constitution and laws of the United States or of this state.

Trustees.

To fill vacancies.

Appoint officers.

SEC. 2. *And be it further enacted,* That the said trustees, their associates and successors, shall have power to associate with them any number of men not exceeding five, who, when elected, shall have equal rights with those here named, and shall fill all vacancies which may occur by death, resignation, refusal to act, or otherwise; and to appoint a president, vice-president, treasurer, and secretary, and to prescribe the duties of each, and to make all such by-laws for the government of the seminary, and of their own meetings, as they shall think proper.

When to meet. Five a quorum.

SEC. 3. *And be it further enacted,* That the first meeting of the trustees be on the second Monday in February, in the year one thousand eight hundred and twenty-three, in the town of Elyton, and that they meet at such times thereafter, as they shall think proper, and that the number five shall constitute a quorum to do business.

May raise money by lottery.

SEC. 4. *And be it further enacted,* That the trustees be, and they are hereby authorized to raise, by way of lottery, for the benefit of said Academy, a sum of money not exceeding five thousand dollars, on such plan or scheme as the said trustees may deem most advisable.

CHAPTER XXVI.

An Act to incorporate the Trustees of Athens Female Academy, in Limestone County.—*Passed December* 9, 1822.

Trustees.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Robert Beaty, John D. Carroll, Beverly Hughes, Daniel Coleman, Andrew Foster, John W. Smith, and Joshua L. Martin, Incorporated.

trustees of the Athens Female Academy, and their successors in office, appointed or elected, or to be appointed or elected according to the rules and regulations of said academy, shall be, and they are hereby incorporated as a body politic and corporate, in deed and in law, by the name and style of "The Trustees of the Athens Female Academy."

Corporation declared perpetual.

SEC. 2. *And be it further enacted*, That the said corporation, by their name aforesaid, shall have perpetual succession of officers and members, to be appointed or elected in such manner, and according to such form, as may be prescribed by the rules and regulations made for the government of the said corporation, and that they may have a common seal, with power to alter and make new the said rules and regulations, and the said common seal, as often as they shall deem expedient.

Corporate powers.

SEC. 3. *And be it further enacted by the authority aforesaid*, That the said corporation shall be able and capable in law, to purchase, have, hold, possess, enjoy, and retain to itself in perpetuity, or for any term of years, any estate, real or personal, of what kind or nature soever, and to sell, alien, or dispose of the same, as they may think proper; and by its name above mentioned to sue and be sued, plead and be impleaded, answer and be answered unto, in any court of law or equity in this state, and to make such rules and regulations not repugnant to the constitution and laws of this state and of the United States, as they may deem expedient.

CHAPTER XXVII.

An Act to provide for the payment of the compensation allowed by law to the Commissioners appointed to lease the Lands belonging to the University of Alabama.—*Passed December* 31, 1822.

800 dollars appropriated out of university funds.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the sum of eight hundred dollars, or so much thereof as may be necessary, be and the same is hereby appropriated, out of the moneys in the treasury arising from the lease of the lands of the university of Alabama, to be paid to the several commissioners appointed to lease the said lands, according to the provision heretofore made by law for their compensation, and to be drawn by a warrant from the comptroller on the treasury of the state, in favour of the said commissioners: and should the said moneys be paid over to the trustees of the university, or to their treasurer, then and in that case, the comptroller is hereby authorized and required to issue his warrant for the amount of said compensation, directed to the said trustees or to their treasurer, in favour of the said commissioners respectively; which shall be paid out of the funds arising from the lease as aforesaid, of the said university lands.

CHAPTER XXVIII.

An Act to amend an Act to authorize the Catholic Congregation of Christians in the City of Mobile, to sell certain Real Estate therein named, and for other purposes.—*Passed December* 31, 1822.

P. M'Loskey appointed commissioner.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Philip M'Loskey of the city of Mobile, be, and he is hereby appointed a commissioner in the place of Terry M'Cusker, deceased; and that so much of the act to which this is an amendment, as requires a bond to be given to Vincent Gener, the priest of said congregation, and also so much of the said act as requires the surplus money in the hands of the said commissioners to be paid to the aforesaid Vincent Gener, be, and the same is hereby repealed.

Repeal.

Bond given to judge of county court.

SEC. 2. *And be it further enacted,* That the bond as provided for in the original act to which this is an amendment, shall hereafter be given to the judge of the county court for the entire benefit of the said congregation; and that any surplus money in the hands of the commissioners, shall be paid over to such person or persons as may be appointed by the aforesaid congregation to receive the same.

MARRIAGE.—1805.

CHAPTER I.

An Act regulating the Solemnization of Marriages.—*Passed January* 5, 1805.

Who may solemnize the rights of matrimony.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That any one of the territorial judges, any ordained minister of the gospel, and any justice of the peace within the county in which such justice is assigned to keep the peace, may solemnize the rites of matrimony between any free persons within this territory, who shall produce a license as hereinafter directed: *Provided,* That such minister shall have produced to the orphans' court of some county in this territory, credentials of his ordination, and of his being in regular communion with the christian society of which he is a member; and have obtained from such court a testimonial authorizing him to solemnize the rites of matrimony in this territory; which said testimonial shall be granted at the discretion of the said court, and recorded by the register in a book to be kept for that purpose, as also for the purpose of recording therein all marriage licenses, consent of parents and guardians, and certificates of the solemnization of marriages.

SEC. 2. *And be it further enacted,* That it shall and may be lawful for every pastor of any religious society in this territory, to join together in marriage such persons as are of the society, according to the rules and customs established by such society to which they belonged: *Provided,* That the clerk, or the keeper of the minutes, proceedings, or other books of the religious society wherein such marriage shall be had and solemnized, shall make a true and faithful register of all marriages solemnized in the society, in a book by him kept, and return a certificate of the same to the register of the orphans' court, to be by him entered in his book kept for that purpose.

Clerks, &c. to keep records.

SEC. 3. *And be it further enacted,* That such book of marriages so kept by the respective registers of the orphans' court, and by the clerks of such religious societies as are authorized to solemnize marriages by the preceding section of this act, shall be admitted as evidence in all the courts of law and equity in this territory.

Records admitted as evidence.

SEC. 4. *And be it further enacted,* That it shall be lawful for the people called Quakers and Menonists, or any other christian society that have adopted similar regulations in their church, to solemnize their own marriages, and be joined together as man and wife by the mutual consent of the parties, openly published and declared before their congregation, when convened for religious worship, in manner and agreeable to the regulations heretofore practised in their respective societies.

Quakers, &c.

SEC. 5. *And be it further enacted,* That marriage licenses shall hereafter be granted and issued by the register of the orphans' court of the county in which the female usually resides, under the following regulations and restrictions: the register shall take a bond with sufficient security in the penal sum of two hundred dollars, payable to the governor of this territory for the time being, and his successors in office, for the use of the territory, conditioned, that there is no lawful cause to obstruct the marriage for which such license is required; and if the male intending to marry be under the age of twenty-one years, or the female under the age of eighteen years, the consent of the parent or guardian of such infant shall be personally given before the said register, or due proof made to him by the oath of at least one credible witness; which oath the said register is hereby authorized to administer, that such parent or guardian did sign a certificate then produced, giving his consent for the celebration of such marriage: whereupon the said register shall record the consent personally given as aforesaid, or the certificate thereof proved as aforesaid, and issue a license, and record the same, directed to any judge, minister, or justice, lawfully authorized to celebrate the rites of matrimony. And if any register shall issue any marriage license without the requisites before prescribed; or in any other manner than above mentioned, such register shall, for each offence, forfeit and pay five hundred dollars, recoverable by action of debt in any court having cognizance thereof, one half to the use of the territory, and the other half to the use of the person suing for the same.

Licenses, by whom, and under what restrictions to issue.

Penalty for marrying without license.

SEC. 6. *And be it further enacted*, That if any judge, minister, or justice, shall join any persons together as man and wife, without lawful license, as by this act required, or go out of the territory and marry persons belonging to the territory without such license, such judge, minister, or justice, shall, in either case, forfeit and pay the sum of one thousand dollars, to be recovered by action of debt; one half to the use of the territory, and the other half to the use of the person suing for the same.

Judges, &c. to transmit certificate to the register.

SEC. 7. *And be it further enacted*, That a certificate of every marriage hereafter solemnized, signed by the judge, minister, or justice, celebrating the same; or (in case of quakers, menonists, and other societies that solemnize their marriage by consent of parties, taken in open congregation as aforesaid,) by the clerk of the meeting, shall be transmitted by such judge, minister, justice, or clerk, as the case may be, to the register of the orphan's court, of the county wherein the marriage is solemnized: to be recorded within six months thereafter by the register: an exemplification of which shall be evidence of such marriage. And the register shall receive for his services, for taking bond, consent of parents, or guardians, and recording the same, granting and recording license, and marriage certificate, the sum of two dollars, to be paid at the time of issuing such license. And every judge, minister, justice, or clerk of a congregation, as the case may be, failing to transmit such certificate to the register, within the time above prescribed, shall forfeit and pay the sum of fifty dollars, to any person who will sue for the same.

Register's fees.

Degrees within which no person shall marry.

SEC. 8. *And be it further enacted*, That if any person shall marry within the following degrees, that is to say:—if the son shall marry his mother or stepmother, the brother his sister, the father his daughter, or his daughter's daughter, or if the son shall marry the daughter, begotten and born of his stepmother; or his aunt, being his father's, or mother's sister; or marry his uncle's widow; or if the father shall marry his son's widow; or if any man shall marry his wife's daughter, or his wife's son's daughter, or his wife's daughter's daughter; every person or persons so unlawfully married, shall be prosecuted by indictment; and on conviction, shall be fined not exceeding five hundred dollars, to the use of the territory. And the court, on conviction as aforesaid, shall moreover declare such marriage null and void to all intents and purposes; and may, at their discretion, cause the parties so separated, to enter into a recognizance, with security, that they will not cohabit thereafter: *Provided*, that nothing herein contained shall be so construed as to render illegitimate the issue of any such marriage, begotten before the same is so annulled.

CHAPTER II.

An Act to make Lawful and Obligatory certain Marriages therein named.—*Passed November* 19, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That all marriages which were solemnized without license, in any county of this territory, before the organization of the same, are hereby made lawful and obligatory in all respects, and the offspring of such marriages are hereby made legitimate to all legal intents and purposes. Children legitimated.

SEC. 2. *And be it further enacted,* That all and every person or persons, who may have celebrated any marriage without legal authority, be, and they are hereby released from all and every penalty or penalties to which they may be liable therefor. Releases.

CHAPTER III.

An Act to authorize Licensed Ministers of the Gospel to Solemnize the Rites of Matrimony.—*Passed June* 13, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That any licensed minister of the gospel of any denomination is hereby authorized to solemnize the rites of matrimony: *Provided,* That such minister shall previously comply with the requisites of the law, in such cases made and provided. Proviso.

SEC. 2. *And be it further enacted,* That all marriages which may have been solemnized by any licensed minister be, and the same are hereby declared to be legal. Marriage legalized.

SEC. 3. *And be it further enacted,* That all laws contrary to the provisions of the first section of this act, be, and the same are hereby repealed.

MASONIC INSTITUTIONS.—1819.

CHAPTER I.

An Act authorizing a Lottery for the benefit of the Madison Lodge, and the Alabama Lodge.—*Passed December* 13, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall and may be lawful for Elias Bayles, Edward G. Kyle, David Moore, Alexander Erskine, Edwin Hickman, William Atwood, and Edwin Jones, or a majority of them, to raise by lottery, in one or more classes, as to them may seem most convenient and necessary, any sum not exceeding fifteen thousand dollars, to be appropriated in erecting and furnishing a Masonic Hall, for the use and benefit of the Madison Lodge and Alabama Lodge, both in the town of Huntsville; and the said Elias Bayles, Edward G. Kyle, David Moore, Alexander Erskine, William Atwood, Edwin Jones, and Edwin Hickman, or such of them as may choose to act, shall, before they enter on the duties of their office, in the county court of Madison, Elias Bayles and others may raise 15,000 dollars by lottery. Managers required to give bond.

enter into bond with security, to be approved by said court, to the state of Alabama, in the penal sum of thirty thousand dollars, conditioned for the faithful discharge of the several duties imposed upon them by this act, which bond may, from time to time, be put in suit in the name of the said state, by any person injured by a breach thereof; and it shall be the duty of the said managers, within ninety days from the completion of the drawing of the said lottery, to pay to the fortunate person or persons, or to his, her, or their order, all such prizes as may be due agreeable to the scheme which they may have determined upon, and published by them. The said lottery may be drawn in the town of Huntsville, or at such other place as may be most expedient, giving due notice of the time and place of such drawing. The said lodges may appoint two or more persons to superintend, in conjunction with two or more of the trustees for the time being, of the town of Huntsville, the drawing of said lottery, whose duty it shall be to see the same fairly and impartially conducted; each of the said managers and examiners, and each clerk that shall be employed, shall before the drawing commences, take an oath to act fairly and impartially, in the discharge of his several duties; which oath may be administered by any justice of the peace. If the said lottery, or any class thereof, be not drawn within three years after the scheme of the same may have been published, the same shall cease, and the purchasers of tickets may demand and receive of the managers any money disbursed for tickets in said lottery.

Prizes to be paid in ninety days after the drawing.

Managers and clerk to take an oath.

Lottery to be drawn in three years.

Managers shall report to the lodges.

SEC. 2. *And be it further enacted*, That the aforesaid managers shall report to the aforesaid lodges, within six months after the passage of this act, and at all such times thereafter as may be ordered by said lodges, or either of them, the progress made in the sale of tickets, or in the drawing of said lottery; and it shall be their duty to pay over all and any money, which may be raised in the manner heretofore authorized, to the order of said lodges, or to such person or persons as may be authorized by said lodges to receive the same, for the purpose of erecting and furnishing said masonic hall.

Lodges may hold real estate.

SEC. 3. *And be it further enacted*, That the master of the Madison lodge and the master of the Alabama lodge, be, and they are hereby authorized by and with the consent of the other officers of the said lodges, to acquire by purchase, or accept as a donation, an eligible lot, or parcel of ground, not exceeding four acres, on which to erect the said masonic hall; and the title in and to said lot or parcel of land, with all and singular its appurtenances, so obtained as aforesaid, shall vest, and is hereby vested in the said masters and other officers of the said Madison lodge and Alabama lodge, and their successors in office, to the sole use, benefit, and behoof of the said lodges.

CHAPTER II.

An Act authorizing Lotteries for the Benefit of the Alabama Lodge, number fifty-one, of Ancient Free-Masons, Halo Lodge, of Cahawba, and Rising Virtue Lodge, number thirty, of Tuskaloosa.—*Passed December* 11, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall and may be lawful for John Murphy, Henry W. Taylor, William B. Patton, Gurdon Robinson, John Gayle, James Dellet, and Charles O. Foster, or a majority of them, to raise by lottery, in one or more classes, as to them may seem most convenient and necessary, any sum not exceeding fifteen thousand dollars; to be appropriated in erecting and furnishing a masonic hall, for the use and benefit of the Alabama Lodge, number fifty-one, of ancient free-masons, in the town of Claiborne.

Alabama lodge. Commissioners.

SEC. 2. *And be it further enacted,* That the aforesaid John Murphy, William B. Patton, Gurdon Robinson, Henry W. Taylor, John Gayle, James Dellet, and Charles O. Foster, or as many of them as may choose to serve, shall, before they enter upon the duties assigned to them in this act, enter into bond with sufficient security before the chief justice of the county court of Monroe county, conditioned for the faithful discharge thereof: which bond may be put in suit in the name of the governor of the state of Alabama for the time being, by any person injured by a breach of any of the provisions of this act.

Commissioners to give bond.

SEC. 3. *And be it further enacted,* That it shall be the duty of the aforesaid persons, or as many of them as may choose to act, within ninety days of the completion of the drawing of said lottery, to pay to the fortunate drawers in said lottery, or to their heirs, or assigns such prizes as may be due, agreeably to the scheme they may have determined upon and published.

SEC. 4. *And be it further enacted,* That the drawing of said lottery, may be held at the town of Claiborne, or at any other place that may be agreed upon by the managers aforesaid: giving due notice of the time and place of such drawing, which shall be conducted in such manner and under such regulations and responsibilities as to the aforesaid persons may seem most expedient: *Provided,* That each clerk or other person concerned in the drawing, shall take an oath before any justice of the peace, faithfully and impartially to discharge their respective duties.

Lottery, where to be drawn.

SEC. 5. *And be it further enacted,* That if the said lottery or any class thereof be not drawn within three years after the scheme of the same shall have been published, the same shall cease, and the purchasers of tickets may demand, and recover of the managers or persons before named in the first and second sections of this act, any money disbursed for tickets in said lottery.

Time of drawing limited.

SEC. 6. *And be it further enacted,* That the managers aforesaid shall report to said lodge within six months after the

Make report.

passage of this act, and at such times thereafter, as may be ordered by said lodge, the progress made in the sale of tickets, or in the drawing of said lottery.

To pay over money.

SEC. 7. *And be it further enacted*, That the said managers shall pay over all and any moneys which may be raised under this act, to the order of said lodge, or to such person or persons as may be authorized to receive the same by said lodge, for the purpose of erecting and furnishing a Masonic Hall.

Master may buy lot.

SEC. 8. *And be it further enacted*, That the master of said lodge be, and he is hereby authorized, by and with the consent of the officers and members of said lodge, to acquire by purchase, or to accept as a donation, an eligible lot or parcel of ground, not exceeding two acres, within the limits of the town of Claiborne, on which to erect said Masonic Hall: and the title to or in said lot or parcel of land, with all and singular the appurtenances, so obtained as aforesaid, shall vest, and is hereby vested in the said master, officers, and members of said lodge and their successors in office, to the sole use, benefit, and behoof of said lodge.

Halo.

SEC. 9. *And be it further enacted*, That it shall and may be lawful for John Taylor, Sen., William Taylor, John B. Norris, H. G. Perry, W. R. Peters, Jesse Beene, Jonas Brown, William B. Allen, David M'Cord, Dunklin Sullivan, and Edward Gantt, or a majority of them, to raise by lottery in one or more classes as to them may seem most expedient, any sum not exceeding twenty thousand dollars, to be appropriated in erecting and furnishing a Masonic Hall for the use and benefit of Halo lodge in the town of Cahawba, under the same regulations, requisitions, and responsibilities as are herein before prescribed for the Alabama lodge, number fifty-one of ancient free-masons.

Rising Virtue.

SEC. 10. *And be it further enacted*, That it shall and may be lawful for Charles Lewen, James Cain, Constantine Perkins, Marmaduke Williams, and John Inge, or a majority of them, to raise by lottery in one or more classes, as to them may seem most expedient, any sum not exceeding fifteen thousand dollars, to be appropriated to the erecting and furnishing a Masonic Hall for the use and benefit of the lodge Rising Virtue, number thirty, at the town of Tuskaloosa, under the same regulations and responsibilities, as are herein before prescribed for the Alabama lodge, number fifty-one, of ancient free-masons.

CHAPTER III.

An Act to incorporate the Most Worshipful Grand Lodge of Ancient Free-masons of Alabama, and its Masonic Jurisdiction.—*Passed June* 16, 1821.

Style of incorporation.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That Major General Thomas W. Farrar, grand master, and others, the officers and members of the most worshipful grand lodge of ancient free-masons of Alabama, and the subordinate lodges under its jurisdiction, and the several persons who now are, or shall hereafter be members respectively of said grand lodge or the subordinate lodges under its jurisdiction, shall be, and they are hereby declared to be a body politic and corporate, in name and in deed, by the name and style of the "Most Worshipful Grand Lodge of Ancient Free-masons of Alabama and its Masonic Jurisdiction," and by the same name shall have perpetual succession of officers and members, and a common seal, with power to change, alter, and make new the same, as often as the said corporation shall judge expedient.

Can hold and manage property.

SEC. 2. *And be it further enacted*, That the said society, and the lodges under its jurisdiction, shall be able and capable in law to purchase, have, hold, receive, enjoy, possess, and retain to itself or any lodge under its jurisdiction, or any of them in perpetuity, or for any term of years, any lands, tenements, or hereditaments, of what kind or nature soever, not exceeding the value of twenty thousand dollars, and to sell, alien, exchange, or demise or lease the same, or any part thereof, as the said corporation shall think proper, and by the same name to sue and be sued, to plead and be impleaded, answer and be answered unto, in any court of law or equity in this state, and to make such rules, orders, and by-laws, not repugnant to the laws of this state, as may be necessary for the order, rule, good government, and management thereof; and it shall and may be lawful for the said society to constitute subordinate lodges, and to do all other things concerning the government, the estates, moneys, and revenues of said grand lodge and subordinate lodges.

SEC. 3. *And be it further enacted*, That it shall and may be lawful for the said corporation to take and hold for ever any charitable donation on devises, and bequest of lands not exceeding ten thousand dollars, and to appropriate the same for the benefit of said corporation, in such manner as may be determined by the same.

SEC. 4. *And be it further enacted*, That the said corporation shall be capable in law to have, hold, and receive, possess and enjoy all such estates, real and personal, moneys, goods, chattels, and effects, which may be devised or bequeathed thereto, by whatever name such gift, devise, or bequest may be made, and to receive subscriptions and other contributions.

To be taken as a public act.

SEC. 5. *And be it further enacted*, That this act shall be deemed and taken as a public act, and notice thereof shall be taken in all the courts of justice and elsewhere in this state, and shall be given in evidence on any trial of any issue or cause, without special pleading.

SEC. 6. *And be it further enacted*, That this act shall take effect from and after the passage thereof.

CHAPTER IV.

Extracts from an Act, Authorizing a Lottery for the Making of a Turnpike Road, leading from the City of Mobile to Chickasaw Bogue Creek, in the County of Mobile, and for other purposes.—*Passed December* 3, 1821.

Lottery authorized for Russelville lodge, number 7.

SEC. 4. *And be it further enacted*, That it shall and may be lawful for James Davis, Peter Martin, John S. Fulton, Anthony White, Robert Gillaspie, James Frazier, and George Higgason, or a majority of them, to raise by lottery any sum not exceeding three thousand dollars, to be appropriated in erecting and furnishing a masonic hall, for the use and benefit of Russelville Lodge, number seven, of ancient free-masons, in the town of Russelville.

Managers to enter into bond.

SEC. 5. *And be it further enacted*, That the aforesaid James Davis, Peter Martin, John S. Fulton, Anthony White, Robert Gillaspie, James Frazier, and George Higgason, or as many of them as may choose to serve, shall, before they enter upon the duties assigned to them in this act, enter into bond with sufficient security, before the judge of the county court of Franklin, conditioned for the faithful discharge thereof; which bond may be put in suit in the name of the governor of the state of Alabama, for the time being, by any person injured by a breach of any of the provisions of this act.

To pay prizes.

SEC. 6. *And be it further enacted*, That it shall be the duty of the aforesaid persons, or as many of them as may choose to act, within ninety days from the completion of the drawing of said lottery, to pay to the fortunate drawers in said lottery, or to their heirs or assigns, such prizes as may be due agreeably to the scheme they may have determined on and published.

Place of drawing lottery.

SEC. 7. *And be it further enacted*, That the drawing of said lottery may be in the town of Russelville, or at any other place that may be agreed upon by the managers aforesaid, giving due notice of the time and place of such drawing, which shall be conducted in such manner, and under such regulations and responsibilities, as to the aforesaid persons may seem most expedient: *Provided*, That each clerk or other person concerned in the drawing, shall take an oath before any justice of the peace, faithfully to discharge their respective duties.

Clerk to take oath.

Proceeding, in case lottery is not drawn.

SEC. 8. *And be it further enacted*, That if the said lottery be not drawn within one year after the scheme of the same shall have been published, the same shall cease, and the purchasers of tickets may demand and recover of the managers, or persons before named in the fourth and fifth sections of this act, any money disbursed for tickets in said lottery.

Managers to report progress.

SEC. 9. *And be it further enacted*, That the managers aforesaid shall report to said lodge within six months after the passage of this act, and at such times thereafter as may be ordered by said lodge, the progress made in the sale of tickets, or the drawing of said lottery.

Managers to pay money

SEC. 10. *And be it further enacted*, That the said managers shall pay over all and any moneys which may be raised under this act, to the order of said lodge, or to such person or persons as may be authorized to receive the same by said lodge, for the purpose of erecting and furnishing a Masonic Hall. to order of lodge.

SEC. 11. *And be it further enacted*, That the master of said lodge be, and he is hereby authorized, by and with the consent of the officers and members of said lodge, to acquire by said purchase, or accept as a donation, an eligible lot or parcel of ground not exceeding one acre, within the town of Russelville, on which to erect said Masonic Hall, and the title to or in said lot or parcel of land, with all and singular the appurtenances so obtained as aforesaid, shall vest, and is hereby vested in the said master, officers, and members of said lodge, and their successors in office, to the sole use, benefit and behoof of said lodge. Lodge may accept of a lot to erect building on.

SEC. 12. *And be it further enacted*, That the worshipful master and officers of every lodge of ancient free-masons in the state of Alabama, shall have the privilege of raising by lottery the sum of three thousand dollars for the use and benefit of their lodges respectively, as prescribed by the provisions of this Act for the benefit of the Russelville lodge, number seven, of ancient free-masons. Privilege of raising money by lottery extended to all lodges in this state.

CHAPTER V.

An Act concerning the Huntsville Masonic Lottery.—*Passed December* 31, 1822.

Whereas, agreeably to the provisions of an Act passed at the last session of the general assembly, authorizing the master and officers of each lodge of ancient free-masons in this state, to raise by lottery the sum of three thousand dollars for the erection of a hall for the same, the masters and certain officers of Madison lodge, number one, and Alabama lodge, number two, have formed a scheme for the erection of a hall in Huntsville, for the joint use of said two lodges—but by the said act cannot raise a sum sufficient to complete such a hall as is desired: Preamble.

SEC. 1. *Be it therefore enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the masters and officers, or any two of the officers of each, of said lodges united, or the present managers of said lottery and their successors to be appointed by said two lodges, shall have power to extend the said scheme, by way of additional classes or otherwise, so as to raise by lottery in the whole, a sum not exceeding eight thousand dollars, in the manner prescribed by the aforesaid act, to be applied to the erection of such hall; and that the same may be done at any time within four years from the passage of this act. Additional classes may be drawn.

MILITIA AND PUBLIC ARMS.—1814.

CHAPTER I.

An Act to authorize the Governor of the Mississippi Territory, to accept of services of Citizens exempted from Military Duty.—*Passed December* 22, 1814.

Volunteer exempts.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the governor be authorized and empowered to accept of the services of volunteers from that class of citizens exempt from militia duty, to act on cases of emergency, in the defence of the counties from which such tender of services may be respectively made; and as soon as the number proffering their services from any one county will justify the appointment and commissioning of officers, the governor,* at his discretion, shall make and issue such appointments and commissions, being regulated by such rules in establishing the grades as he may adopt; provided, no person be enrolled under the age of eighteen, except by consent of his parent or guardian.

To be provided with arms, ammunition, &c.

SEC. 2. *And be it further enacted*, That immediately on the governor's acceptance of any number of volunteers, by virtue of this act, each private shall proceed to provide himself with a good rifle, musket, or shot gun, with four flints, twenty rounds of powder, ball, or buckshot, best suited to his gun, together with the most convenient accoutrements. The commissioned officers, shall be armed with swords; and the arms and accoutrements of all such volunteers shall be exempted from executions in payment of debts and their persons, when on service, free from arrest in civil cases.

SEC. 3. *And be it further enacted*, That when any emergency shall make it necessary in the opinion of the governor, he is empowered to order the whole, or any part of the persons volunteering under this act, to duty.

To be subject to the laws of congress, &c.

SEC. 4. *And be it further enacted*, That such volunteer corps shall, while in service, be subject to the laws of congress, the rules and articles of war, and laws for the government of the militia of this territory.

CHAPTER II.

An Act to amend an Act, entitled "An Act to reduce into one and amend the several Militia Laws of this Territory."—*Passed December* 27, 1814.†

Brigadier general, clause respecting him.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That it shall not in future be the duty of the brigadier general to attend the regimental musters, nor shall it be the duty of the adjutant general to reside at the seat of government, provided he will keep his office at that place.

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* The Constitution and Laws of Alabama provide another mode of appointment.

† The Act to which this is an amendment was passed January 22, 1814: but was superseded and virtually repealed in 1820.

And adjutant general.

Regimental courts-martial. In what manner organized.

SEC. 2. *And be it further enacted*, That all regimental courts martial for the assessment of fines, for the trial of deserters, or for the trial of officers for improper conduct, shall consist of a president and judge advocate, to be appointed by the officer ordering the court, and six members to be taken by detail from the commissioned officers of the regiment where said court is ordered; the president and one of the members not to be of lower rank than captain, four members including the president may organize the court and proceed to business. In case the president does not attend, the senior member of the court attending shall be the president, and in case the judge advocate does not attend, the president shall appoint some other person not a member of the court to perform that duty; and in all cases where the sentence of the court does not cashier the officer, or affect the life of the accused, the officer ordering the court shall approve and order the sentence to be carried into execution, or reject the same; and such proceedings shall not be transmitted to the governor or adjutant general; but in all cases, affecting the life of any person, or the commission of an officer, the approval of the sentence of the court martial by the governor shall be necessary before the same is carried into exetion.

Respecting sentences.

Summons of officers.

SEC. 3. *And be it further enacted*, That in case there shall be but one commissioned officer in a captain's company, he shall be authorized and required to summon by his sergeant, from an adjoining company in the same battalion, one commissioned officer to sit with the officer issuing said summons, at the time and place specified by said summons, and to pass on all such delinquencies as directed by law; and any officer refusing or neglecting to obey such summons shall be fined in the sum of five dollars, to be assessed and collected as other fines are collected in said regiment; and any officer or private fined agreeably to the provisions of this act, shall have ten days to pay over their fines to the proper officer without cost.

To pass on delinquencies.

Fines in case of refusal to obey the summons.

The duty of lieut. colonels to order courts-martial to try delinquents or deserters.

SEC. 4. *And be it further enacted*, That it shall be the duty of each lieutenant colonel or officer commanding a regiment, in the event of any non-commissioned officer or private being drafted or ordered for service, and failing to repair to the place of rendezvous, or furnish a sufficient substitute, to order a regimental court-martial as soon thereafter as may be convenient, to assess the fine, and in case such delinquent be arrested and in custody, he shall be tried for the desertion, and if any person shall abscond, or fail to repair to the place of rendezvous when drafted or ordered as aforesaid, any person whatsoever apprehending such delinquent, and delivering him to the officer commanding the detachment in service which he failed to join, or from which he absconded, shall be entitled to a certificate therefor and be credited for a six months tour of duty in the regiment to which he belongs, and any

Apprehension of delinquents.

In case of desertion; vacancies how supplied.

militiaman drafted or ordered for service as aforesaid, and failing to appear, the deficiency occasioned thereby shall be supplied from the captain's district to which such delinquent belonged, and in case he be afterward arrested, he shall be bound, in addition to the fine imposed on him by the court martial, (if he is not sentenced to death) to take the place of the man who was drafted to supply such vacancy, except the man apprehending such delinquent be a militiaman in service, and in that case the man so apprehending him shall be entitled to a discharge from the service, and the person apprehended be put in his place.

Captains to subject to a draft, persons liable to do military duty, &c.

Sec. 5. *And be it further enacted*, That it shall be the duty of each and every captain in this territory, to subject to a draft each person liable to do militia duty, who may at any time have been enrolled in his company, unless he knows such person has actually removed permanently from his district, or unless such person so enrolled shall produce a certificate from some officer commanding a company, that he is duly enrolled in the company of the officer so certifying.

Governor to appoint officers in cases where militia are ordered into U. States service.

Sec. 6. *And be it further enacted*, That when any militia from this territory are ordered into the service of the United States, the governor of this territory shall have power and authority to appoint and commission all officers required, not authorized by any express law of this territory, so as to officer the company detachment, squadron, or regiment conformably to the then military establishment of the United States, which commissions shall continue in force whilst the officer remains in service, and no longer.

Returns and reports to be countersigned.

Sec. 7. *And be it further enacted*, That it shall be the duty of each regimental adjutant, before he transmits any return or report required to be made by him, to present the same to be countersigned by the officer commanding the regiment or battalion as the case may be.

Legislators exempt.

Sec. 8. *And be it further enacted*, That members of the territorial legislature shall be exempt from militia duty.

Officers on foot to be armed with espontoons.

Sec. 9. *And be it further enacted*, That all commissioned officers who perform their duty on foot shall be armed with an espontoon, any thing in the act to which this is an amendment to the contrary notwithstanding.

Repealing clause.

Sec. 10. *And be it further enacted*, That so much of the second section of the act to which this is an amendment, as subjects clerks and sheriffs to draft for actual service, also so much of the ninth section of said act as requires regimental adjutants to march to the place of rendezvous any detachment of detailed militia, also so much of the eighth section of said act as requires majors to attend company musters once in three months, and all other acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER III.

An Act to amend an Act, entitled "An Act to reduce into one and amend the several Militia Laws of this Territory, approved the twenty-second day of January, eighteen hundred and fourteen."—*Passed December* 13, 1816.

Regimental field officers.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That from and after the passage of this act, instead of one lieutenant colonel commandant to each regiment, and one major to each battalion of the militia of this territory, as is provided by the act to which this is an amendment, there shall be one colonel, one lieutenant colonel, and one major to each regiment consisting of two battalions; and where there shall be only one battalion, it shall be commanded by a major.

Their duties.

SEC. 2. *And be it further enacted,* That the duties of the colonel shall be the same, and he shall be liable to the same penalties, as those prescribed by law in relation to a lieutenant colonel, and the lieutenant colonel shall have the command of the battalion in which he resides, which shall be the first battalion of the regiment; his duties shall be the same, and he shall be liable to the same penalties, as those prescribed by law in relation to a major; and the duties of a major shall be the same, and he shall be liable to the same penalties, as those prescribed by law in relation to a major in the act to which this is an amendment.

In cases of only one battalion. There shall be one adjutant, two battalion musters annually. Major to perform duties of colonel.

SEC. 3. *And be it further enacted,* That where there shall be only one battalion, there shall be one adjutant appointed, and it shall be the duty of the major commanding, to muster his battalion twice in each year; one of which at such time as the brigadier-general may order, and the other at such time as said major may appoint, and he shall perform all the duties of a colonel, as far as they will apply to a battalion.

When two counties have one battalion, each shall form one regiment, but not go out of their county to muster.

SEC. 4. *And be it further enacted,* That where there are two counties, neither of which is sufficiently populous to form a regiment, the governor shall have power to form a regiment by uniting the battalions of the two counties, until such time as either of them can form a regiment: *Provided,* That the said battalions shall muster separately, and not be compelled to go out of their county to attend regimental muster; but in all other respects to be subject to the same regulations as if formed by one county.

Supernumerary officers.

SEC. 5. *And be it further enacted,* That any officer who may be dispossessed of his command by the operation of this act, shall hold his commission as a supernumerary officer, until a command of equal grade be offered him, and in case of his refusal to accept, he shall forfeit his commission.

Exempts.

SEC. 6. *And be it further enacted,* That coroners, justices of the peace, practising physicians, and keepers of the public jails, shall be exempt from ordinary militia duty, but not from draft for actual service.

Members of general court-martial to receive daily pay and mileage.

SEC. 7. *And be it further enacted*, That whenever a general court-martial shall be ordered, the officers composing said court shall have and receive the sum of one dollar and fifty cents per day, for each and every day they shall sit, and the sum of one dollar and fifty cents for every twenty miles they shall travel in going to and returning from said court, to be paid out of the territorial treasury, upon the certificate of the judge advocate, countersigned by the president.

Books, music, and colours to go to successors in office.

Penalty for withholding them.

SEC. 8. *And be it further enacted*, That in case of the resignation, or removal of any officer commanding a regiment or battalion, it shall be his duty to deliver the books, musical instruments, and colours belonging to the regiment or battalion, to the officer succeeding him in the command; and in case of his neglect or refusal, he shall be fined in a sum not exceeding one hundred dollars, at the discretion of the court-martial trying such offence.

Battalion musters, when holden. Regiment muster once a year. Company court-martial.

SEC. 9. *And be it further enacted*, That the time of holding the battalion musters shall be within ten days before the regimental muster. There shall be but one regimental muster in each year; and at every company muster, there shall be a company court-martial held, to try the delinquents at the preceding musters.

Cavalry officers exempt from regimetal drill. Colonel of cavalry may order general muster of cavalry, And courts-martial.

Provided, not to travel more than sixty miles.

SEC. 10. *And be it further enacted*, That the officers and non-commissioned officers of the cavalry shall be exempt from regimental drill, and the colonel of the cavalry shall have power to order the different troops of cavalry in this territory to meet at such time and place as the general may appoint, once in each year, to muster, not more than two days at any one time; to order courts-martial, and the fines shall be the same as for non-attendance of regimental musters: *Provided*, That no troop shall be compelled to travel more than sixty miles in going to the place of muster.

Repealing clause.

SEC. 11. *And be it further enacted*, That so much of the act to which this is an amendment, and all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER IV.

An Act to amend the Militia Laws, and for other purposes.—*Passed February 13, 1818.*

Repealing clause.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That so much of any act as provides that the militia of this territory shall form one brigade, and authorizes the appointment of brigadier general, shall be, and the same is hereby repealed.

Governor authorized to organize the militia. To call them out when necessary.

SEC. 2. *And be it further enacted*, That the governor shall have power to arrange the respective regiments, battalions, and companies of militia; and from time to time, when, in his opinion, the public safety may require it, or on a requisition under the authority of the United States, to call out any portion thereof, or any volunteer corps, and to order the same into the service of the United States.

Quarter-masters to furnish supplies, &c.

SEC. 3. *And be it further enacted*, That when any portion of the militia, or any corps of volunteers, shall be called into service by order of the governor, it shall be the duty of the quarter masters, or such other officer or officers as the governor may appoint, to furnish them with the necessary supplies, and means of transportation, and to render a just account of expenditures.

SEC. 4. *And be it further enacted*, That the sum of two thousand dollars be, and the same is hereby set apart, out of any moneys in the treasury not otherwise appropriated, and shall constitute a contingent fund to defray any expenses which may be incurred under the provisions of this act, and such other incidental expenses as may be required for the public service; and the governor may, from time to time, draw on the auditor of public accounts for such sums as may be necessary; stating always the amount, and the object for which it is wanted; whereupon the auditor shall issue his warrant therefor on the territorial treasurer, who shall forthwith pay the same.

CHAPTER V.

EXTRACT FROM THE CONSTITUTION.

MILITIA.

SEC. 1. The general assembly shall provide by law for organizing and disciplining the militia of this state, in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States in relation thereto.

SEC. 2. Any person who conscientiously scruples to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service.

SEC. 3. The governor shall have power to call forth the militia to execute the laws of the state, to suppress insurrections, and repel invasions.

SEC. 4. All officers of the militia shall be elected or appointed in such manner as may be prescribed by law: *Provided*, That the general assembly shall not make any such elections or appointments, other than those of adjutants general and quarter-masters general.

SEC. 5. The governor shall appoint his aids-de-camp; majors general, their aids-de-camp, and all other division staff officers; brigadiers general shall appoint their aids, and all other brigade staff-officers; and colonels shall appoint their regimental staff-officers.

SEC. 6. The general assembly shall fix by law the method of dividing the militia into divisions, brigades, regiments, battalions, and companies: and shall fix the rank of all staff-officers.

CHAPTER VI.

An Act to organize the Militia of this State.—*Passed December* 20, 1820.

Exempts from militia duty.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That all free white men and indented servants between the age of eighteen and forty-five years, shall compose the militia of this state: Judges of the supreme, chancery, circuit, and county courts, and their respective clerks, secretary of state, treasurer, comptroller, attorney general, solicitors to the different circuits, licensed ministers of the Gospel of every denomination, public ferrymen, justices of the peace, postmasters, and postriders, shall be exempt from militia duty, except in cases of imminent danger, insurrection, or invasion.

Divisions. First. Second. Third. Fourth. Brigades.

SEC. 2. *And be it further enacted,* That the militia of this state shall compose four divisions; the first of which shall consist of the counties of Jackson, Madison, Limestone, and Lauderdale; the second division shall be composed of the counties of Cotaco, Blount, St. Clair, Lawrence, Franklin, Marion, Tuscaloosa, Shelby, and Jefferson; the third division shall be composed of the counties of Greene, Marengo, Perry, Cahawba, Autauga, Montgomery, Dallas, and Wilcox; the fourth division shall be composed of the counties of Monroe, Conecuh, Henry, Butler, Clarke, Washington, Baldwin, and Mobile: which divisions shall form nine brigades; the first of which shall be composed of the counties of Jackson and Madison; the second of Limestone and Lauderdale, the third of the counties of Cotaco, Blount, and St. Clair; the fourth of the counties of Lawrence, Franklin, and Marion; the fifth of the counties of Tuskaloosa, Jefferson, and Shelby; the sixth of the counties of Greene, Marengo, Perry, and Cahawba; the seventh, of the counties of Autauga, Montgomery, Dallas, and Wilcox; the eighth of the counties of Monroe, Conecuh, Henry, and Butler; the ninth of the counties of Clarke, Washington, Baldwin, and Mobile; each of which shall be commanded by a brigadier general: Each brigade shall consist of not less than two, nor more than five regiments; each regiment to be commanded by a colonel commandant, and to be composed of two battalions, the first of which shall be commanded by a lieutenant colonel; the second battalion by a major: Each battalion shall consist of not less than two, nor more than five companies; each company shall consist of not less than forty privates, and shall be commanded by a captain, lieutenant, and ensign, four sergeants, four corporals, and two musicians.

Regiments.

SEC. 3. The regiments shall be designated and numbered as follows, viz.: The county of Jackson, number one; the county of Madison, number two and three; the county of Limestone, number four and five; the county of Cotaco, six; the county of Lawrence, seven and eight; the county of Franklin, nine; that part of Lauderdale county lying east of Shoal creek, shall compose regiment number ten; and that part lying west of Shoal creek, shall compose regiment eleven; St. Clair, twelve; Shelby, thirteen; Blount, fourteen, Jefferson, fifteen; Marion, sixteen; Tuskaloosa, seventeen and eighteen; Greene, nineteen; Marengo, twenty; Cahawba, twenty-one; Dallas, twenty-two; Autauga, twenty-three; Montgomery, twenty-four; Henry, twenty-five; that part of Monroe lying east of the Alabama river, shall compose the twenty-sixth regiment, and that part lying west of the Alabama, shall compose the twenty-seventh regiment; Conecuh, twenty-eight; Butler, twenty-nine; Clarke, thirty; Washington, thirty-one; Perry, thirty-two. The northern regiment of Madison shall be the second regiment; the southern regiment of said county shall be the third regiment; the eastern regiment of Limestone shall be the fourth regiment; and the western regiment of the said county shall be the fifth regiment; the northern regiment of Lawrence shall be the seventh regiment; and the southern regiment of said county shall be the eighth regiment; and the line between the fifth and sixth townships shall be the dividing line of said regiments.

Major and brigadier generals, how elected.

SEC. 4. Major generals shall be elected by all the commissioned officers in the division; brigadier generals shall be elected by all the commissioned officers in their respective brigades: Field officers shall be elected by all free white males over the age of eighteen years in their respective regiments: Captains and subalterns by all free white males over the age of eighteen years in their respective companies. All militia officers may hold their commissions during good behaviour: none shall resign under two years, unless permitted to do so by a court-martial; the president of which shall be of equal rank with the officer wishing to resign, under the penalty of being ineligible to any military appointment for the next succeeding two years. And in case any military officer may become a candidate at any election for a superior office, and not be elected, his place shall not be vacated thereby.

Field officers.

Platoon officers.

To hold appointment two years.

Writ of election for general officers.

SEC. 5. From and after the passage of this act, when any election shall be holden for a major general, or a brigadier general, it shall be the duty of the executive to appoint the time of holding the same, giving not less than sixty days, nor more than eighty days notice for the election of a major general; and not less than forty days, nor more than sixty days notice for the election of a brigadier general.

Returning officer.

SEC. 6. The Governor, upon issuing a writ of election for major general, or brigadier general, to the sheriffs residing in said division or brigade, shall determine on one of the said sheriffs to whom the other sheriffs of the said division or brigade shall immediately upon the close of the polls, make their returns; and the sheriff receiving the said returns, shall within four days transmit to the secretary of the state, a correct poll of said election.

Election, where held.

SEC. 7. The officers of the regiment in the division, or brigade, shall vote at their respective court-houses, or places of holding court, in each county.

Election, how contested.

SEC. 8. In elections for major general, or brigadier general, if any candidate be dissatisfied, he may notify the governor and the contending candidate, that he intends to contest said election; and shall file his reasons therefor in the office of the secretary of state, within twenty days after said election; whereupon the governor shall forthwith issue his order to the adjutant general, directing a general court-martial to be holden, to consist of not less than seven, nor more than thirteen officers of the divisions or brigades, which shall have power to decide; the president of which shall be of equal grade with the office for which the candidate may contest the election.

Adjutant and quarter-master general, how elected.

SEC. 9. The adjutant and quarter-master general shall be elected by joint vote of both houses of the general assembly, and shall hold their offices for the term of four years: *Provided*, That the governor shall have power to fill any vacancy that may occur in the recess of the general assembly, by appointments to expire at the end of the next session of the general assembly: *Provided also*, That at the first election for general officers under this act, the officers elected shall be commissioned under the same date, and draw for rank; and at all elections thereafter the officers shall take rank from the dates of their commissions.

Rank, how determined.

Maj. Gen. appoint staff.

SEC. 10. The major generals shall have power to appoint an assistant adjutant general to their respective divisions, whose duty it shall be to receive returns of the strength and condition of the militia from the brigade major, consolidate the same, and make out three fair copies thereof, lay them before the major general for his inspection, and transmit annually two copies thereof to the adjutant general of the state, and retain the other copy in his own office. It shall also be his duty to make all details (in pursuance of orders from the major general,) on the different brigades of their respective divisions, and keep a fair register of all the general orders and official acts of the major general, and lay the same, when required, before any tribunal, before which a major general may be tried on any charges exhibited against him. The major general shall appoint two aids-de-camp, who shall have the rank of major, and perform such duties as are performed by aids of major generals in the army of the United States.

His duty.

Aids-de-camp.

Brig. General's aids.

SEC. 11. Brigadier generals shall appoint their brigade staff, which shall consist of a brigade major with the rank of major, an aid-de-camp with the rank of captain, and a brigade quartermaster with the rank of captain. It shall be the duty of the brigade major to attend regimental drills when ordered by the brigadier general, and drill the officers in conformity with the rules and regulations of the infantry of the United States, to receive from the adjutants of regiments returns of their strength and condition, consolidate the same, and make three fair copies, which shall be submitted to the brigadier general for his examination; two of which copies he shall annually transmit to

Brigade major. Duty.

the adjutant general of the division to which his brigade may belong, retaining the other in his office. It shall also be his duty to make all details (in pursuance of orders from the brigadier general,) on the respective regiments of his brigade, and keep a fair register of all general orders, and official acts of the brigadier general, and lay the same before any tribunal, before which the brigadier general may be tried on any charges alleged, when required to do so. It shall be the duty of the aids-de-camp to perform such duties as are performed by aids of brigadier generals in the army of the United States. Brigade quarter-masters shall take charge of all public stores committed to their care; and perform all other duties required of assistant quarter-masters general in the service of the United States.

Aids-de-camp.

Brigade quarter-master.

Sec. 12. The assistant adjutant generals and brigade majors shall receive the sum of five dollars for each day they may be engaged in the discharge of their respective duties, to be paid out of any money in the treasury not otherwise appropriated, on the certificate of the commanding officer.

Assistant adjutant and brigade quarter-master's compensation.

Sec. 13. Major generals may review any corps of their division when they may think proper: *Provided*, They shall not convene by special order any troops for that purpose. Brigadier generals shall review the different regiments of their brigades, once in each and every year. Major generals, or officers commanding divisions, shall receive and execute all orders from the governor. Brigadier generals, or officers commanding brigades, shall receive and execute all orders from the major general, or officers commanding divisions. Colonels, or officers commanding regiments, shall receive and execute all orders from brigadier generals, or officers commanding brigades: and officers commanding battalions and companies, shall receive and execute all orders from commanding officers of regiments.

Reviews.

Duties of Major Generals.

Brig. Gen.

Colonels.

Commandants of battalions.

Sec. 14. It shall be the duty of the brigadier generals to cause the commissioned officers of each regiment to meet at their usual muster ground, and have them drilled two days previous to the regimental muster, giving at least thirty days notice thereof; and each battalion shall hold one muster annually, at such time and place near the centre of the bounds of the battalion, as may be directed by the commanding officer of the regiment, he giving the commanding officer of the battalion twenty days notice of such muster, transmitting at the same time a copy of the order to the major general of the division, whose duty it shall be to transmit to the governor a copy of the same; and any officer failing or refusing to attend the aforesaid drills, may be arrested and cashiered, in addition to the fines contained in the twenty-ninth section of this act: *Provided*, That all reasonable excuses shall be taken.

Regimental drill.

Battalion musters.

Sec. 15. No sentence of a court martial affecting the life of an officer, shall be executed until approved by the governor, and four-fifths of both houses of the general assembly.

Sentences of court affecting life.

Sec. 16. It shall be the duty of a major general to arrest a brigadier general for neglect of any duties enumerated in this

Arrests, how made.

act, and order a court-martial for his trial; and brigadier generals shall have power to arrest any officer in his brigade for neglect of duty.

Cause of cashierment.

SEC. 17. Any officer of the militia of this state, who shall be found guilty of conduct unbecoming an officer and a gentleman, shall be cashiered.

Courts-martial organized.

SEC. 18. Whenever any of the courts-martial (regimental courts martial excepted,) provided for in this act, shall have been detailed and convened, the senior or superior officer shall be the president, and the court shall choose a judge advocate, who shall be sworn by the president to a faithful and impartial performance of his duty, and to keep the proceedings of the court secret until divulged by the officer ordering the same; the judge advocate shall then administer a similar oath to the president and members of the court.

Governor's aids-de-camp.

SEC. 19. The governor shall have power to appoint four suitable persons as aids-de-camp, who shall have the rank of lieutenant colonel, and serve the governor in the same manner as the aids of general officers do.

Rank of adj. gen. and duty.

SEC. 20. The adjutant general shall rank as colonel of cavalry: he shall receive from the assistant adjutant general of divisions all returns of the strength and condition of the militia of this state, and make out four fair copies thereof, annually, lay one copy of the same before each branch of the general assembly, and retain one copy in his own office, for the information of the governor. He shall transmit all orders from the governor, and in pursuance of his orders, make details in the several divisions of this state. He shall annually transmit to the secretary of the war department of the United States, a return of the strength and condition of the militia of this state. He shall obey and execute all orders of the governor, and receive as compensation therefor, the sum of two hundred dollars.

Compensation.

Quarter-master general's duty.

SEC. 21. The quarter master general shall be charged with the care of all public stores, of arms, ammunition, tents, camp equipage, &c. And whenever any part of the militia of this state shall be called into actual service, he shall, on the requisition of the governor, furnish such articles of arms, ammunition, and camp equipage as may be in his possession or power to procure: he shall perform all such duties (when in the field) as are performed by quarter masters general in the army of the United States; and shall have the rank of colonel of infantry: he shall keep a register of all arms, accoutrements, and military stores belonging to the state; he shall also take care that the public arms and stores as may be returned by any part of the militia of this state who may have been in actual service; he shall at all times give to the governor, when required, an account of the quantity, state, and condition of all arms, camp equipage, and public stores that may belong to the state. He shall give security in the sum of two thousand dollars, for the faithful performance of his duty, and receive for his services annually two hundred dollars.

Rank.

Compensation.

Works of defence, how erected.

Sec. 22. The commander in chief for the time being, may, at his discretion, aid and assist the citizens of any portion of the state, in erecting temporary works and means of protection, and build such redoubts and establish such military posts as he shall deem necessary and best calculated to promote the common defence.

Public arms to be preserved.

Sec. 23. The commander in chief for the time being, shall have authority to remove to some temporary place of safety, and deposit such portion of the arms, ammunition, and military stores, at any time deposited in the arsenal of the state, as circumstances may appear to require, and when necessary in his opinion, to provide and furnish sufficient guards to protect the public arsenals, until it be found expedient to call out into public service, detachments of the militia on whom this duty may in part devolve; and it shall also be his duty from time to time, to examine, or cause to be examined by some proper officer, the situation of the several arsenals throughout the state, to require security from the arsenal keepers, and to remove them for negligence, or other improper conduct, or for incapacity for performing the duties devolving on them as such, and to appoint, in case of removal, other persons to supply the vacancy thereby occasioned.

Arsenal keepers may be removed.

Reg't adjutant's duty.

Sec. 24. It shall be the duty of adjutants of regiments to attend all regimental and battalion musters, and assist in preparing for review or evolution. He shall keep a register of the officers of the regiment, with their grades, and the strength and condition of each company. He shall obey all orders from the field officers of his regiment, serve all notices or process directed to him, on the officers of his regiment. He shall make, within ten days after such muster, a complete return of the strength and condition of his regiment, and transmit the same to the brigade major of his brigade. He shall keep a record of all regimental or battalion orders, and the proceedings of regimental and battalion courts-martial. He shall keep a register of every officer and private, drafted or detailed for the service of the state, or the United States; muster, inspect, and march to the place of rendezvous every detachment of detailed militia, and forward a complete return of them to the brigade major. He shall distribute to the captains or commanding officers of his regiment such forms of returns as the brigade major may furnish him with; and each adjutant shall receive such compensation as the regimental court-martial shall think proper for his services, to be paid by the paymaster out of the fines collected, on order from the president of such court.

His compensation.

Regimental quarter-master's duty.

Sec. 25. It shall be the duty of the quarter master to attend all regimental and battalion musters, and under the direction of the commanding officer, choose a place of parade, and with a guard prevent disturbances from spectators. He shall, on order from the commanding officer of the regiment, purchase instruments of music, colours, &c. and draw on the paymaster for the same.

Paymaster's duty.

Sec. 26. It shall be the duty of the paymaster to attend regimental and battalion musters, and aid in the execution of the orders of the commanding officers. He shall receive all moneys collected for fines, by the sheriff or constable, and receipt for the same. He shall account to the regimental court-martial at every annual session, for the amount of fines received, and how expended; he shall, on order from the president of regimental court-martial, pay the quarter master and adjutant for expenses and services. The regimental paymaster shall retain six per centum out of the moneys received, as compensation.

Compensation.

Rank, regimental staff.

SEC. 27. The adjutant, quarter master, and paymaster, shall rank as first lieutenants; and the regimental staff, in addition to them, shall consist of a regimental surgeon, two surgeon's mates, a sergeant major, a quarter-master sergeant, a drum-major, and fife-major.

Company muster.

Company officer's duty.

SEC. 28. It shall be the duty of company officers to hold company musters once in every two months, except the months of November, December, January, and February; to give ten days notice of every company, battalion, or regimental muster, and advertising at the usual muster ground, and six other places in the bounds of his company, or in any newspaper circulating within the same, or notice given at one muster of the next company, battalion, or regimental muster, shall be deemed sufficient notice of the same, and the commanding officer shall note down all delinquencies at company musters, and make a return on honour thereof, to the company court martial; and in like manner, make returns of delinquents at battalion, or regimental musters, to battalion or regimental courts-martial. He shall cause the company to be drilled in conformity to the instructions governing the infantry of the United States.

Fines for neglect of duty.

Major and brigadier generals.

Colonels.

Major.

Captain.

Subalterns.

SEC. 29. The following fines shall be assessed on officers and privates failing to perform any of the duties required by this act. On a major or brigadier general, not less than fifty, nor more than one thousand dollars. On a colonel, not less than fifteeen, nor more than five hundred dollars; on a lieutenant colonel, or major, not less than ten, nor more than four hundred dollars; on a captain, not less than five, nor more than two hundred and fifty dollars; on a lieutenant or ensign, not less than four, nor more than one hundred and fifty dollars; on any of the regimental staff, not less than five, nor more than two hundred dollars; on non-commissioned officers, not less than two, nor more than fifty dollars; on privates, not less than one, nor more than four dollars.

Non-commissioned officers, how appointed.

SEC. 30. Any officer commanding a company shall have power to appoint the non-commissioned officers of his company; and any non-commissioned officer so appointed and refusing to act, shall be fined five dollars.

Regimental staff.

Paymaster to give bond.

SEC. 31. The colonel, or officer commanding a regiment, shall have power to appoint his regimental staff, which shall consist of one adjutant, one quarter-master, each with the rank of lieutenant, and a paymaster, who shall perform such duties as are performed by paymasters in the army of the United States; and who shall give bond with security for the faithful performance of his duty, in the sum of one thousand dollars, to the governor: and it shall be the duty of the colonel, or officer taking such bond, to transmit the same to the office of the secretary of state. The said paymaster shall rank as lieutenant. The colonel, or officer commanding a regiment, shall also have power to appoint one surgeon and two mates. The adjutant, quarter-master, and paymaster shall be commissioned by the governor, but shall not be entitled to vote in elections for general officers.

Staff officers to be commissioned.

Penalties for refusing to turn out.

Sec. 32. Any non-commissioned officer or private of the militia, who shall refuse to turn out on the order of his proper officer, in case of insurrection, invasion, or alarm, shall be fined in any sum not less than twenty, nor more than one hundred dollars.

Penalty for failing to rendezvous.

Sec. 33. Any non-commissioned officer or private, who shall refuse, when drafted and ordered to repair to the place of rendezvous, shall suffer death, or such other punishment as the court-martial may inflict.

Fines, how collected and disposed of.

Sec. 34. All fines incurred by authority of this act, shall be returned by the president of the court-martial before whom such fines may be assessed, to the constable of the company in whose limits the offender may reside, for collection. The certificate of the president shall be a sufficient warrant to the constable for collection of the same; and the constable shall be further required to collect and pay over to the regimental paymaster all such fines within forty days after receiving the authority for collection of the same: If no property be found, the defaulter may be seized and committed to jail, until the fine be paid: *Provided, however,* That all reasonable excuses shall be heard by the court, when the party accused shall appear to give the same: *And provided also,* if the said defaulter will swear before any justice of the peace, that he is not worth the amount of the fine, he shall be released.

Courts-martial to be detailed.

Sec. 35. The commanding officers of regiments and battalions shall, within twenty days after their respective regimental and battalion musters, detail a regimental or battalion court-martial, as the case may be, for the trial of such persons as may be brought before it, giving at least five days notice to each defaulter; it shall be the duty of the officer ordering the court, to appoint the adjutant, or such person as he may think proper, who shall act as judge-advocate to said court. No officer shall be a member of a court-martial while he is a defaulter.

Judge advocate to be appointed.

Persons attending musters exempt from arrest.

Sec. 36. No officer or private shall be arrested by any civil process while going to, continuing at, or returning from any muster or court-martial, or other military meeting; and any arrest, process, or execution on the person, at such times, is hereby declared void. All persons liable to do militia duty, going to, or returning from any muster or court-martial, shall pass all ferries, bridges, and turnpikes, free of expense.

Toll free.

Bystanders at courts-martial liable to confinement.

Sec. 37. Any officer may put into confinement for the day any bystander that may interrupt the muster, drill, or court-martial; and any person enrolled, appearing at any muster or drill, shall be ordered into ranks; and if he refuses, shall be

Invalids exempt from military duty.

put into confinement for the day, and fined as a defaulter; and no person shall be exempt from military duty, unless in the opinion of a regimental court-martial, he shall be wholly unfit for service; and if the court have doubts, they may require the opinion of the regimental surgeon; as soon, however, as such inability may be removed, he shall be again ordered to duty.

Militia called into actual service, how provisioned.

SEC. 38. All militia called into actual service shall be paid, provisioned, and governed as the United States' troops are, and be subject to the rules and articles for the government of the armies of the United States, whether such militia be accepted in the service of the United States or this state.

Principal to serve for substitute.

SEC. 39. In case of a second draft before the tour of duty expires, for which a substitute has been hired, the substitute shall stand his draft; and if drafted, be liable to join the second detachment, as soon as his former tour may expire; and in case of drafts, the requisition shall call for officers, non-commissioned officers, and privates: *Provided always*, That any person furnishing a substitute, shall be exempt from serving himself; but shall, notwithstanding, be compelled to attend company, battalion, and regimental musters, and perform patrol duty; and in the event of a second draft, should his substitute be drafted, before the former tour is performed, the person furnishing said substitute shall perform his tour of duty, until the former has been performed, and the said substitute join the second detachment.

Substitute.

Person liable to duty must report himself.

SEC. 40. All persons liable to do militia duty, moving into the bounds of a company, shall, within thirty days, or at the next muster after his arrival in said bounds, report himself to the commanding officer of said company, who shall immediately enrol him. Every person between the ages of eighteen and forty-five years shall be compelled to do militia duty by the commanding officers of the company in whose bounds he may reside, until such person shall produce a certificate from the captain of some volunteer company, that he is legally enrolled in such corps, and is equipped as the corps requires.

Who liable.

Volunteers.

SEC. 41. There may be one company of volunteer light infantry or riflemen in each regiment, to consist of not less than forty-eight, nor more than eighty privates, to be officered in the same manner as other companies of the regiment are; the non-commissioned officers and privates of the said companies shall be liable to do patrol duty within the limits of the militia companies in which they may reside; they may choose their own uniform; and no volunteer companies shall be raised for a shorter period than two years.

May choose uniform.

Term of enrolment.

Artillery and cavalry.

SEC. 42. There may be one troop of cavalry, and one company of artillery in each regiment, organized in the same manner, and liable to perform the same duties as volunteer companies.

Vacancies, how filled.

SEC. 43. When any vacancy occurs in a regiment, it shall be filled in the following manner: When in the office of colonel, the brigadier-general shall issue a writ of election to the sheriff, giving thirty days notice of said election; appointing the place of holding such election; and the said sheriff shall make his return thereof in the same manner as is made in elections of general officers. The colonel commandants shall in like manner provide for the election of lieutenant-colonels, and majors shall in like manner provide for the election of company officers.

SEC. 44. When any officer shall be elected in the mode pointed out by this act, the opposing candidate after such election has been held, and before return has been made thereof, if he thinks himself aggrieved, and shall think proper to contest the election, he shall notify the officer ordering the same, in writing, within ten days after said election; and the officer ordering said election, shall order a regimental or battalion court-martial, as the case may be, which shall decide the contest. The president of the court shall transmit the decision of the court to the secretary of state: but if the election shall be set aside by the decision of the said court, the president thereof shall transmit the said decision to the officer ordering the said election, who shall forthwith order a new election.

Elections, how contested.

SEC. 45. All arms and accoutrements of the militia of this state, shall be exempted from distress either by attachment, execution, or other legal process.

Arms exempt from distress.

SEC. 46. Company courts-martial shall be holden on the next regular muster day of each company, at the usual muster ground, for the trial of delinquents. The company court-martial shall consist of one or more commissioned officers; from whose decision an appeal may lie to the battalion court-martial: the delinquent shall notify the court of his intention to appeal from their decision to the said battalion court-martial; and the officer or officers, holding the said company court-martial, shall furnish the said battalion court martial with the proceedings in the case: and if the decision shall be confirmed against the delinquent, he shall be fined in double the amount of the judgment of the company court-martial.

Company courts-martial.

Appeals.

SEC. 47. Should any person who has been fined according to the provisions of this act, remove out of the county in which said fine was assessed, the amount of said fine shall be forwarded to the sheriff of the county into which the delinquent has removed, by the constable of the company to which the delinquent belongs, and the sheriff, to whom such return is made, shall proceed forthwith to make the money within thirty days, cause the money to be paid over to the paymaster of the regiment from which said delinquent removed, after retaining such commissions as are granted for the collection of such sums in other cases.

If delinquent removes, how proceeded against.

SEC. 48. The southern or third regiment of Madison county militia, shall be divided into two regiments, each battalion forming a regiment. The second battalion of the late third regiment, shall be numbered the thirty-third regiment. All vacancies occurring by reason of said division, shall be filled in the manner heretofore prescribed by this act.

Third regiment divided.

Thirty-third regiment.

Vacancies, how filled.

SEC. 49. Regiments and battalions may be changed by a

Regiments, how changed.

general court-martial, or regimental court-martial, as the case may be, for the internal regulation of either.

Uniform.

SEC. 50. The uniform of the officers of the militia of this state, shall be in future as follows:

The general, field, and staff officers, shall be the same as the uniform of officers of the same grade of the army of the United States. The uniform of the company officers, to be the same as that of officers of the same grade in the regular army, with the following exceptions:

The uniform coats of the captains and subalterns shall be what is termed a coatee, or short coat, with standing collar, and single breast; in lieu of the chapeau de bras, the captains and subalterns shall wear a citizen's black hat, which shall be complete with a cockade and white plume. The officers are at liberty, by paying due regard to the colour of the uniform, to determine on the quality.

Adjutant general to furnish a statement of uniform.

SEC. 51. It shall be the duty of the adjutant general to ascertain the uniform of the regular army as early as practicable, and furnish without delay, to the brigade majors of each brigade, a statement regulating the uniform of the militia of this state agreeably to this act, identifying the different articles of the same.

Cahawba guards to use public arms.

SEC. 52. The quarter-master general, or person who shall have the care of the public arms in the town of Cahawba, shall be authorized and required to deliver any number of the same on every muster day, to the commandant of the volunteer company, in the county of Dallas, known by the name of the Cahawba guards: *Provided*, That it shall be the duty of the commandant of said company to have said arms well cleaned, and returned to the arsenal or place of deposit, on the same day on which they shall be delivered out; and in default thereof, the officer commanding said company shall be liable in double the amount of the price of any article of arms which he shall have received and not returned, or which shall be damaged. And the keeper of the said arms shall be authorized and required to sue in the name of the governor of the state of Alabama, before any justice of the peace for Dallas county, for double the price of any article of arms which shall not be returned agreeably to the receipt of the commandant of said company, which he shall give to the person delivering the same to him; and also for any damage which may be done to any of the arms received, which price and damage shall be ascertained by the justice trying the same.

Commission to issue.

SEC. 53. In all cases where returns have been, or shall hereafter be made to the secretary of state, the governor shall commission accordingly.

Officers to uniform themselves.

SEC. 54. *And be it further enacted*, That all commissioned officers shall uniform themselves within six months after the passage of this act, or six months after they shall have been commissioned.

SEC. 55. All acts and parts of acts, passed at Huntsville the seventeenth December, eighteen hundred and nineteen, repugnant to this act be, and the same are hereby repealed.

CHAPTER VII.

Extract from an Act to alter and enlarge the terms of certain Courts.—*Passed December* 21, 1820.

SEC. 8. *And be it further enacted*, That the militia of the county of Pickens, shall compose the thirty-fourth regiment, and be attached to the fifth brigade of the militia in this state. Militia, what regiment.

CHAPTER VIII.

An Act, supplementary to an Act, entitled "An Act to organize the Militia of this State, passed at Cahawba, December 20, 1820, and for other purposes." *Passed June* 16, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, it shall be lawful for the sixth and fifteenth regiments of the militia of this state to consist of any number of companies not exceeding twelve, nor less than four, any thing in the act to which this is a supplement to the contrary notwithstanding. Sixth and fifteenth regiments enlarged.

SEC. 2. *And be it further enacted*, That courts martial shall hereafter have the same power to compel the attendance of witnesses as are vested in the courts of law and equity in this state. Powers of courts-martial.

SEC. 3. *And be it further enacted*, That so much of the fourteenth section of the act to organize the militia of this state, passed at Cahawba, December 20, 1820, as makes it the duty of commanding officers of regiments to transmit a copy of the order ordering battalion musters to the major generals of divisions, be, and the same is hereby repealed. Repealing clause.

SEC. 4. *And be it further enacted*, That it shall be the duty of the brigadier general to transmit a copy of the order ordering regimental musters to the major general of the divisions, whose duty it shall be to transmit to the governor a copy of the same. Order for regimental musters to be transmitted to major General.

SEC. 5. *And be it further enacted*, That from and after the passage of this act, there may be one company of volunteer light infantry and riflemen in each regiment, to consist of not less than forty, nor more than eighty privates, to be officered in the same manner as other companies of the regiment are; the non-commissioned officers and privates of the said companies shall be liable to do patrol duty within the limits of the militia companies in which they may reside; they may choose their own uniform, and no volunteer company shall be raised for a shorter period than two years. Volunteers. To perform patrol duty. Choose uniform. Limit of enrolment.

SEC. 6. *And be it further enacted*, That the first regiment shall be divided by the brigadier general commanding the brigade, and the regiment when divided shall compose a part of the first brigade; the additional regiment shall be the thirty-fifth regiment: the eastern regiment of Jackson shall be the first, and the western regiment shall be the thirty-fifth regiment First regiment to be divided. Regiment 35.

Election of officers.

of the militia of this state. And the brigadier general shall issue writs of election to officer the regiment as in cases provided by law.

Huntsville independent blues.

SEC. 7. *And be it further enacted*, That nothing in this act, or in the act to which this is an amendment, shall be so construed as to prevent the organizing and establishing the volunteer company of light infantry, called and styled "The Independent Blues, of the Town of Huntsville," raised by Captain J. K. Dunn. And it is hereby made lawful for the executive to cause commissions to issue to the different persons who have been elected as officers in said company: And the same shall constitute a part of the third regiment, and be subject to all the rules and regulations, as provided by the existing laws.

CHAPTER IX.

An Act to repeal in part, and amend the forty-third section of an Act to organize the Militia of this State, passed 20th December, 1820.—*Passed December* 18, 1821.

Company officers how elected.

Commanding officers to make return.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That so much of the forty-third section of an act to organize the militia of this state, passed at Cahawba, December the twentieth, one thousand eight hundred and twenty, as requires writs of election for company officers to issue to the sheriff, be, and the same is hereby repealed; and in future, all elections for company officers, the officer whose duty it shall be to order the same, shall appoint the place for holding said election within the company district at the muster ground, where such vacancy may be, giving at least fifteen days notice thereof, and appoint a superintendent of the same, who shall make a correct return of the poll of said election to the commanding officer of the regiment; a statement of which to be by him transmitted to the executive office.

Cause of vacancy to be set forth.

SEC. 2. *And be it further enacted*, That in all election returns hereafter to be made to the secretary's office for the purpose of obtaining commissions, the return shall set forth the cause of vacancy, whether by death, resignation or removal, or whether it be for the purpose of officering a new raised corps.

CHAPTER X.

An Act to alter and amend the Militia Laws of this state.—*Passed December* 26, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, the county of Wilcox shall compose one regiment, to be known and numbered as the thirty-sixth regiment of the militia of the state of Alabama.

Brigadier-General of 7th brigade.

SEC. 2. *And be it further enacted*, That the brigadier general of the seventh brigade of the militia of this state, be, and he is hereby authorized and required, to hold or cause to be held, an election for a colonel of said regiment conformably to the militia laws now in force in this state, whose duty it shall be, so soon as he is commissioned, to proceed forthwith to organize, and officer said regiment.

authorized to hold elections.

Duty of Colonels.

SEC. 3. *And be it further enacted*, That the northern regiment, in the county of Franklin, shall be known and numbered as the thirty-seventh regiment of the militia of the state of Alabama, and the line between the fifth and sixth townships, shall be the dividing line between the northern and southern regiments in said county.

Franklin regiment divided.

SEC. 4. *And be it further enacted*, That the nineteenth regiment of the Alabama militia, be, and the same is hereby divided, and the second battalion of said regiment shall constitute the thirty-eighth regiment of the said militia; and the said regiment shall be organized in the manner heretofore pointed out by law.

19th regiment divided.

SEC. 5. *And be it further enacted*, That the sixth regiment is divided, and the eastern battalion shall be the sixth regiment; and the western battalion shall be the thirty-ninth regiment of the militia of this state; and it shall be lawful for the officers of the sixth and thirty-ninth regiments to alter the line dividing said regiments.

6th regiment divided.

SEC. 6. *And be it further enacted*, That the first battalion of the twenty-fourth regiment of this state, shall hereafter compose one regiment, which shall be known as the fortieth regiment of the militia of this state.

24th regiment divided.

SEC. 7. *And be it further enacted*, That it shall be the duty of the brigadier general, of the seventh brigade of the militia of this state, and he is hereby required, to hold or cause to be held, an election at the house of James Ashley, on the first Monday in March next, for a colonel of said regiment, conformably to the militia laws now in force in this state, whose duty it shall be, so soon as he is commissioned, forthwith to organize and officer said regiment.

Brigadier-general of 7th brigade to hold elections.

SEC. 8. *And be it further enacted*, That the colonel of the twenty-fourth regiment, be, and he is hereby authorized and required to hold or cause to be held, an election to fill such vacancies as may happen by said division, if any.

Colonel of 24th regiment to hold elections.

SEC. 9. *And be it further enacted*, That all laws and parts of laws, contrary to the provisions of this act, be, and the same are hereby repealed.

CHAPTER XI.

An Act to alter and amend the several Acts now in force, organizing the Militia of this State.—*Passed December* 17, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That lieutenants, colonels, and majors, shall hereafter be elected by their respective battalions, and shall reside within the

Lieutenant colonels and majors, how elected.

limits of the same; and whenever the office of lieutenant colonel or major shall become vacated, there shall be a poll opened at the respective muster grounds of said battalion, for the election of a lieutenant colonel or major, as the case may be.

Colonel commandant.

SEC. 2. *And be it further enacted,* That in all elections to be holden hereafter for colonel commandants, the polls shall be opened at the several election precincts within the limits of the regiment in which said election shall take place.

Officers serving on courts-martial not allowed pay.

SEC. 3. *And be it further enacted,* That no allowance shall be given to officers, for services rendered as members of any courts-martial whatever.

Assistant adjutant general when to make returns.

SEC. 4. *And be it further enacted,* That the returns as now required by law from assistant adjutant generals, of the strength and condition of the troops within their divisions, shall be made out and forwarded to the adjutant general's office, on or before the third Monday in November in each and every year.

Return of elections how made.

SEC. 5. *And be it further enacted,* That in all returns hereafter to be made to the executive office, upon which commissions are to be issued, if to fill vacancies, the name of the person and cause of such vacancy shall be stated in said return; if an original appointment, the return shall so express it.

Officers absent without furlough for a longer time than twelve months, appointment vacated.

SEC. 6. *And be it further enacted,* That if any officer, whatever, shall absent himself from his command, at any one time, for a longer period than twelve months, unless furloughed by the commanding officer of the regiment, brigade, or division, as the case may be, his office shall be considered vacated, and shall be filled as provided for by law in other cases of vacancies.

Judge advocate allowed pay.

SEC. 7. *And be it further enacted,* That the judge advocates hereafter appointed to general courts-martial, shall be allowed the sum of five dollars per day, for each day they may be actually engaged in completing the records of the same, and the president's certificate shall be deemed a sufficient voucher to the treasurer of the state, for the payment of the same.

Brigade major allowed pay.

SEC. 8. *And be it further enacted,* That brigade majors shall be allowed the sum of five dollars, for every thirty miles travelling, to and from their residence, in attending the several regimental musters, as now provided for by law.

President of courts-martial may issue summons for attendance of witness.

SEC. 9. *And be it further enacted,* That when any general court-martial shall hereafter be ordered, the president of said court shall, on application of either of the parties interested, issue a summons for any witness, which shall be served by the sheriff of the county where such witness may reside, and returned by said sheriff as in civil cases: *Provided,* That the parties desiring such summons to be served, shall tender to the sheriff such fees as are allowed him for serving subpœnas in civil cases.

Proviso.

Sheriff to receive fees.

SEC. 10. *And be it further enacted,* That the thirty-fifth section of an Act passed at Cahawba, entitled "An Act to organize the Militia of this State," be so construed, that hereafter it shall be the duty of the commandants of regiments or battalions, to detail and convene their respective courts-martial, within the twenty days as provided for in said section.

SEC. 11. *And be it further enacted*, That hereafter there shall be only two company musters in each year; the first in the month of April, and the other in the month of October. Two company musters in each year.

SEC. 12. *And be it further enacted*, That defaulters of battalion and regimental musters, shall be tried by their company court-martial, at their respective company muster grounds. Defaulters how tried.

SEC. 13. *And be it further enacted*, That an Act organizing the Militia of this State, passed at Huntsville, on the seventeenth day of December, eighteen hundred and nineteen; and all other acts or parts of acts, repugnant to the provisions of this act, be, and the same are hereby repealed. Repeal.

CHAPTER XII.

An Act expressing the Gratitude of the State of Alabama, for the services rendered by Samuel Dale to this State.—*Passed December* 15, 1821.

SEC. 1. *Whereas* the territory now composing the state of Alabama, was, during our late contest with the British government, subjected to all the hardships and cruelties which a relentless war, waged by the merciless savage, is calculated to produce: *And whereas* our venerable citizen, Colonel Samuel Dale, was first to interpose his aid and save its defenceless inhabitants from Indian rapine and Indian barbarity, who, during our bloody conflict with the Creek Nation, exposed himself to privations, hardships, and difficulties, that have impaired his constitution and reduced him to indigence: *And whereas* the said Colonel Samuel Dale, not having it in his power, from the situation of the country, to produce to the general government sufficient vouchers to prove his services, his sufferings, and his losses, by which he has failed to receive even justice from that quarter: *And whereas* we the representatives of the people of the state of Alabama, feeling it a duty we owe to ourselves and our constituents, not only to remunerate him for losses actually sustained, but also to compensate him for his distinguished services: Therefore, Preamble.

Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That the treasurer be, and he is hereby required to pay to the said Colonel Samuel Dale, half the pay now allowed by the general government to colonels in the army of the United States: and that he is hereby declared a brevet brigadier general in the militia of this state, and shall rank as such whenever called into the service of this state. And the governor is hereby required to commission him accordingly: and that the treasurer is authorized and required to pay to the said brevet brigadier general Samuel Dale, on the first day of January in each and every year, the half pay as aforesaid, for and during his life, out of any moneys in the treasury not otherwise appropriated. Pay allowed colonel Dale. Rank. Governor to commission him.

CHAPTER XIII.

An Act to repeal in part an Act passed 15th December, 1821, concerning Colonel Samuel Dale.—*Passed January* 1, 1823.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That so much of the act passed at the last session of the general assembly as entitled Colonel Samuel Dale to rank as brigadier general when in service, be, and the same is hereby repealed.

SEC. 2. *And be it further enacted*, That nothing in the aforesaid act shall be so construed as to entitle Colonel Samuel Dale to receive any allowance for forage or rations.

SEC. 3. *And be it further enacted*, That the amount already received by him for rations and forage, shall be applied to his next annual pension.

CHAPTER XIV.

An Act providing for the Preservation of the Public Arms.—*Passed December* 4, 1819.

Governor to contract for a building in Cahawba.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That for the purpose of preserving the arms, which have been, or may be furnished to this state, by virtue of one of the acts of congress, providing for arming and equipping the militia of the United States, the governor be, and he is hereby authorized, to cause to be erected a suitable building on such lot or parcel of land reserved for public purposes at the town of Cahawba, as he may designate; and that the arms aforesaid shall be deposited therein, and kept in proper order by some fit person, whom the governor may appoint, under such rules and responsibilities as he shall prescribe.

Appropriation of one thousand dollars.

SEC. 2. *And be it further enacted*, That to enable the executive to carry into effect the provisions of this act, and for the defraying the expenses which have been, or may be incurred in the transportation of the arms already furnished, a sum not exceeding one thousand dollars be, and the same is hereby appropriated, to be paid out of any moneys in the treasury not otherwise appropriated.

CHAPTER XV.

An Act to authorize the Governor to dispose of the Public Arms of this State. *Passed December* 7, 1820.

How transported.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the governor of the state of Alabama, or the person exercising the powers of governor be, and he is hereby authorized to order the quartermaster-general, to cause to be transported to any point in this state, any number of public arms which he may deem necessary, when he shall have reason to believe that there is danger of insurrection, or invasion, or that the public good requires such transportation.

To whom transported.

Sec. 2. *And be it further enacted*, That when any arms are transmitted pursuant to the provisions of this act, the commandant of the regiment, to which the arms may be sent, shall execute his receipt to the governor of the state, for the number he may receive, and he shall be responsible for the safe keeping, and return of the same whenever he may be required.*

Sec. 3. *And be it further enacted*, That the quarter-master general be, and he is hereby required to cause to be conveyed upon receiving the governor's order forthwith the number of arms to the place specified in such order.

Act when to take effect.

Sec. 4. *And be it further enacted*, That this act shall be in force from and after the passing thereof.

CHAPTER XVI.

An Act to amend and repeal a part of the Second Section of an Act to authorize the Governor to dispose of the Public Arms of this State, passed on the seventh day of December, 1820—*Passed November* 28, 1821.

Governor may transmit public arms.

Officer to whom transmitted, to give bond, &c.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That whenever it is deemed necessary by the governor to transmit the public arms, in pursuance of the provisions of the act to which this is an amendment, the governor for the time being shall be, and he is hereby authorized to send them to such officer as he may appoint; which officer so receiving such arms, shall give bond and sufficient security to the governor or his successors in office, in such sum as the governor requiring the bond may deem sufficient, for the safe keeping and delivery of said arms, when required by the governor.

CHAPTER XVII.

An Act to revise, consolidate, and amend the several Acts relative to the Militia of this State.—*Passed December* 31, 1822.

Who liable to military duty.

Exceptions.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all free white men, and indented servants, between the ages of eighteen and forty-five years, shall compose the militia of this state; judges of the supreme, chancery, circuit, and county courts, and their respective clerks, secretary of state, treasurer, comptroller, attorney-general, solicitors to the different circuits, licensed ministers of the gospel, of every denomination, public ferrymen, justices of the peace, postmasters, postriders, and millers, shall be exempt from militia duty; except in cases of imminent danger, insurrection, or invasion.

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* See the next Chapter.

1st division. 2d 3d 4th. 1st brigade 2d 3d 4th 5th 6th 7th 8th 9th Regiments how formed. Battalion. Companies.

Sec. 2. *And be it further enacted*, That the militia of this state shall compose four divisions; the first of which shall consist of the counties of Jackson, Madison, Limestone, Lauderdale, and Decatur; the second division shall be composed of the counties of Morgan, Blount, St. Clair, Lawrence, Franklin, Marion, Tuskaloosa, Shelby, Jefferson, and Pickens; the third division shall be composed of the counties of Greene, Marengo, Perry, Bibb, Autauga, Montgomery, Dallas, and Wilcox; the fourth division shall be composed of the counties of Monroe, Conecuh, Henry, Butler, Clarke, Washington, Baldwin, Mobile, Covington, and Pike; each of which divisions shall be commanded by a major-general, and shall form nine brigades: the first of which shall be composed of the counties of Jackson, Decatur, and Madison; the second of Limestone and Lauderdale; the third of Blount, St. Clair, and Morgan; the fourth of Lawrence, Franklin, and Marion; the fifth of Tuskaloosa, Jefferson, Shelby, and Pickens; the sixth of Greene, Marengo, Perry, and Bibb; the seventh of Autauga, Montgomery, Dallas, and Wilcox; the eighth of Monroe, Conecuh, Henry, Butler, Convington, and Pike; the ninth of Clarke, Washington, Baldwin, and Mobile; each of which shall be commanded by a brigadier-general: each brigade shall consist of not less than two, nor more than five regiments; each regiment to be commanded by a colonel commandant, and to be composed of two battalions; the first of which shall be commanded by a lieutenant-colonel; the second by a major; each battalion shall consist of not less than two, nor more than six companies; each company shall consist of not less than forty privates, and shall be commanded by a captain, lieutenant, and ensign, four sergeants, four corporals, and two musicians.

Regiments how numbered.

Sec. 3. *And be it further enacted*, That the regiments shall be designated and numbered as follow, to wit: the county of Jackson, number one; county of Decatur, number thirty-five; county of Madison, number two, three, and thirty-three; county of Limestone, number four and five; county of Morgan, number six and thirty-nine; the county of Lawrence, number seven and eight; the county of Franklin, number nine and thirty-seven; the county of Lauderdale, number ten and eleven; the county of St. Clair, number twelve; the county of Shelby, number thirteen; Blount, number fourteen; Jefferson, number fifteen; Marion, number sixteen; Tuskaloosa, number seventeen and eighteen; Greene, number nineteen and thirty-eight; Marengo, number twenty; Bibb, number twenty-one; Dallas number twenty-two; Autauga, number twenty-three; Montgomery, number twenty-four and forty; Henry, number twenty-five; Monroe, number twenty-six and twenty-seven; Conecuh, number twenty-eight; Butler, number twenty-nine; Clarke, number thirty; Washington, number thirty-one; Perry, number thirty-two; Pickens, number thirty-four; and Wilcox, number thirty-six.

Major and brigadier-ge-

Sec. 4. *And be it further enacted*, That major-generals shall be elected by all the commissioned officers in the division;

brigadier-generals, shall be elected by all the commissioned officers in their respective brigades: Field officers shall be elected by all free white males over the age of eighteen years, in their respective regiments; captains and subalterns, by all free white males over the age of eighteen years, in their respective companies. All militia officers may hold their commissions during good behaviour; none shall resign under two years, unless permitted to do so by a court-martial; the president of which shall be of equal rank with the officer wishing to resign, under the penalty of being ineligible to any military appointment for the next succeeding two years; and in case any military officer may become a candidate at any election for a superior office, and not be elected, his place shall not be vacated thereby.

nerals, how elected.

Field officers.

Captains, &c.

SEC. 5. *And be it further enacted*, That from and after the passage of this act, when any election shall be holden for a major-general, or a brigadier-general, it shall be the duty of the executive to appoint the time of holding the same; giving not less than sixty days, nor more than eighty days notice for the election of major-general; and not less than forty, nor more than sixty days notice for the election of brigadier-general.

Executive to appoint the time of holding elections for major and brigadier-general.

SEC. 6. *And be it further enacted*, That the governor upon issuing a writ of election for major-general, or brigadier-general, to the sheriff residing in said division, or brigade, shall determine on one of the said sheriffs, to whom the other sheriffs of the said division or brigade shall, immediately upon the close of the polls, make their returns, and the sheriff receiving the said returns shall, within four days, transmit to the secretary of state a correct poll of said election.

Duty of sheriffs in elections.

SEC. 7. *And be it further enacted*, That the officers of the regiment, in the division, or brigade, in elections for major-generals, or brigadier-generals, shall vote at their respective court-houses, or places of holding courts, in each county.

Place of holding election.

SEC. 8. *And be it further enacted*, That in elections for major-generals, or brigadier-generals, if any candidate be dissatisfied, he may notify the governor, and the contending candidate, that he intends to contest the election; and shall file his reasons therefor, in the office of the secretary of state, within twenty days after said election; whereupon, the governor shall forthwith issue his order to the adjutant-general, directing a general court-martial to be holden, to consist of not less than seven, nor more than thirteen officers, who shall have power to decide which of the contending candidates is duly elected, or to declare said election void: *Provided*, That an officer of equal grade, with the office for which the candidates may contest the election, shall be detailed as president thereof; and in the event of his failing to attend at the time and place specified in the order, the officer attending highest in rank shall preside.

Mode of contesting.

Proviso.

SEC. 9. *And be it further enacted*, That the adjutant and quartermaster-general shall be elected by joint vote of both houses of the general assembly, and shall hold their offices for the term of four years: *Provided*, That the governor shall have

Adjutant and quartermaster-general, how elected.

Proviso.

power to fill any vacancy, that may occur in the recess of the general assembly, by appointments to expire at the end of the next general assembly.

Major-general may appoint an assistant adjutant-general. His duties.

May appoint inspector-general, &c. His duty.

SEC. 10. *And be it further enacted*, That the major-generals shall have power to appoint an adjutant-general, with the rank of colonel to their respective divisions, whose duty it shall be to receive returns of the strength and condition of the militia, from the assistant adjutant-generals; consolidate the same, and make out three fair copies thereof, lay them before the major-general for his inspection, and transmit annually on or before the third Monday in November, one copy thereof to the adjutant-general of the state, and retain the other copy in his own office; it shall also be his duty to make all details (in pursuance of orders from the major-general) on the different brigades of their respective divisions, and keep a fair register of all the general orders, and official acts of the major-general, and lay the same when required, before any tribunal, before which a major-general may be tried on any charges exhibited against him: the major-general shall also have power to appoint an inspector-general, with the rank of colonel, and a quartermaster-general and two aids-de-camp, with the rank of major; whose several duties shall be such as are prescribed for officers of the like rank and grade in the army of the United States.

Brigadier general may appoint Brigade-staff.

Duties of assistant adjutant-general, &c.

SEC. 11. *And be it further enacted*, That brigadier-generals shall appoint their brigade-staff, which shall consist of an assistant adjutant-general, with the rank of major; an inspector general, with the rank of major; an aid-de-camp, with the rank of captain, and a brigade quartermaster, with the rank of captain: it shall be the duty of the assistant adjutant-general to attend regimental drills, when ordered by the brigadier-general, and drill the officers in conformity with the rules and regulations of the infantry of the United States, to receive from the adjutants of regiments, returns of their strength and condition, consolidate the same, and make three fair copies, which shall be submitted to the brigadier-general for his examination; one of which copies he shall annually transmit to the adjutant-general of the division, to which his brigade may belong, retaining the others in his office; it shall also be his duty to make all details, (in pursuance of orders from the brigadier-general) on the respective regiments of his brigade, and keep a fair register of all general orders, and official acts, of the brigadier-general, and lay the same before any tribunal, before which the brigadier-general may be tried on any charges alleged, when required to do so; it shall be the duty of the assistant inspector-generals and aids-de-camp to perform such duties as are performed by officers of the like grade and rank in the army of the United States; brigade quartermasters shall take charge of all public stores committed to their care; and perform all other duties required of assistant quartermasters-general in the service of the United States.

Assistant adjutant-general, his pay.

SEC. 12. *And be it further enacted*, That the assistant adjutant-generals of brigade, shall receive the sum of five dollars for each day they may be engaged in the discharge of their respective duties, to be paid out of any money in the treasury, not otherwise appropriated, on the certificate of the commanding officer.

Duty of major-general.

Of brigadier-general.

Colonel's duty.

Sec. 13. *And be it further enacted*, That major-generals may review any corps of their division when they may think proper: *Provided*, they shall not convene by special order any troops for that purpose; brigadier-generals may review the different regiments of their brigade, once in each and every year; major-generals, or officers commanding divisions, shall receive and execute all orders from the governor; brigadier-generals, or officers commanding brigades, shall receive and execute all orders from the major-general, or officers commanding divisions; colonels, or officers commanding regiments, shall receive and execute all orders from brigadier-generals, or officers commanding brigades; and officers commanding battalions and companies, shall receive and execute all orders from commanding officers of regiments.

Officers to meet and be drilled.

Notice of drill.

Penalty for non-attendance.

Proviso.

Sec. 14. *And be it further enacted*, That it shall be the duty of the brigadier-general to cause the commissioned and non-commissioned officers of each regiment to meet at their usual muster ground, and have them drilled by the assistant adjutant-general two days previous to the regimental muster, giving at least thirty days notice thereof; and each battalion shall hold one muster annually, at such time and place, near the centre of the bounds of the battalion as may be directed by the commanding officer of the regiment, he giving the commanding officer of the battalion twenty days notice of such muster; and the commissioned and non-commissioned officers of the said battalion shall attend and be drilled the day preceding the said battalion muster, by the commanding officer of said battalion; and any officer or non-commissioned officer failing, or refusing to attend the aforesaid drills, may be arrested and cashiered, in addition to the fines contained in the twenty-ninth section of this act: *Provided*, that all reasonable excuses shall be taken.

Sentence affecting life.

Sec. 15. *And be it further enacted*, That no sentence of a court-martial, affecting the life of an officer, shall be executed until approved by the governor and four-fifths of both houses of the general assembly.

Arrest for neglect of duty.

Sec. 16. *And be it further enacted*, That it shall be the duty of a major-general to arrest a brigadier-general, for neglect of any duties enumerated in this act, and order a court-martial for his trial; and brigadier-generals shall have power to arrest any officer in his brigade for neglect of duty.

Officers to be cashiered.

Sec. 17. *And be it further enacted*, That any officer of the militia of this state, who shall be found guilty of conduct unbecoming an officer and a gentleman, shall be cashiered.

Certain court-martial, how appointed.

Sec. 18. *And be it further enacted*, That whenever any of the courts-martial (regimental courts-martial excepted) provided for in this act, shall have been detailed and convened, the senior or superior officer shall be the president, and the court shall choose a judge advocate, who shall be sworn by the president to a faithful and impartial performance of his duty, and shall keep the proceedings of the court secret until divulged by the officer ordering the same; the judge advocate shall then administer a similar oath to the president and members of the court.

Governor to appoint aids.

Sec. 19. *And be it further enacted*, That the governor shall have power to appoint four suitable persons as aids-de-camp, who shall have the rank of lieutenant-colonel, and serve the governor, in the same manner as the aids of general officers do.

Adjutant-general to be adjutant and inspector-general.

His duty.

His compensation.

Sec. 20. *And be it further enacted*, That the adjutant-general shall be adjutant and inspector-general, with the rank of colonel; he shall receive from the adjutant-generals of division all returns of the strength and condition of the militia of this state, and make out four fair copies thereof, annually, lay one copy of the same before each branch of the general assembly, and retain one copy in his own office, for the information of the governor; he shall transmit all orders from the governor, and in pursuance of his orders, make details in the several divisions of this state; he shall annually transmit to the secretary of the war department of the United States, a return of the strength and condition of the militia of this state; he shall obey and execute all orders of the governor, and receive as compensation therefor the sum of one hundred dollars per annum.

Quartermaster-general's duty.

To give bond.

Compensation.

Sec. 21. *And be it further enacted*, That the quartermaster-general shall be charged with the care of all public stores, of arms, ammunition, tents, camp equipage, &c. and when any part of the militia of this state shall be called into actual service, he shall, on the requisition of the governor, furnish such articles of arms, ammunition, and camp equipage, as may be in his possession or power to procure; he shall perform all such duties (when in the field) as are performed by quartermaster-generals in the army of the United States, and shall have the rank of colonel; he shall keep a register of all arms, accoutrements, and military stores belonging to the state; he shall also take care that the public arms and stores, as may be returned by any part of the militia of this state who have been in actual service; he shall at all times give to the governor, when required, an account of the quantity, state, and condition of all arms, camp equipage, and public stores that may belong to the state; he shall give security in the sum of two thousand dollars, for the faithful performance of his duty, and receive for his services annually one hundred dollars: *Provided*, That he shall receive no salary except he keep the public arms in good order, which are deposited in the state arsenal.

Commander in chief may erect military posts.

Sec. 22. *And be it further enacted*, That the commander in chief, for the time being, may at his discretion, aid and assist the citizens of any portion of the state, in erecting temporary works, and means of protection; and build such redoubts, and establish such military posts as he shall deem necessary and best calculated to promote the common defence.

Remove military stores.

Sec. 23. *And be it further enacted*, That the commander in chief, for the time being, shall have authority to remove to some temporary place of safety, and deposite such portion of the arms, ammunition, and military stores, at any time deposited in the arsenal of the state, as circumstances may appear to require, and when necessary in his opinion, to provide and furnish sufficient guards to protect public arsenals, until it be found expedient to call out into public service detachments of militia, on whom this duty shall in part devolve; and it shall also be his duty from time to time, to examine, or cause to be examined, by some proper officer, the situation of the several arsenals throughout the state, to require security from the arsenal keepers, and to remove them for negligence, or other improper conduct, or for incapacity for performing the duties devolving on them as such; and to appoint in case of removal, other persons to supply the vacancy thereby occasioned: and the quartermaster-general is hereby authorized and required to furnish to each of the volunteer companies of infantry, cavalry, and artillery within this state, on application of the commanding officer of any of said companies, any quantity, and such description of arms from the public arsenals as may be necessary for the arming of said corps: *Provided*, that the said commanding officer enter into and give bond, with good and sufficient security, payable to the governor and his successors in office, in double the amount of the value of said arms so furnished, whenever demanded by the proper authority, in the same good condition, and without damage, further than the wear of time, as when received; which bond shall be transmitted to, and deposited in the secretary of state's office.

Call out militia.

Inspect arsenals.

Quarter-master general to furnish volunteer companies with arms.

Proviso.

Sec. 24. *And be it further enacted*, That it shall be the duty of adjutants of regiments to attend all regimental and battalion musters, and assist in preparing for review or evolutions; he shall keep a register of the officers of the regiment, with their grades, and the strength and condition of each company; he shall obey all orders from the field officers of his regiment, serve all notices or process directed to him, on the officers of his regiment; he shall make within ten days after each regimental muster, a complete return of the strength and condition of his regiment, and transmit the same to the assistant adjutant-general of his brigade; he shall keep a record of all regimental and battalion orders, and the proceedings of regimental and battalion courts-martial; he shall keep a register of every officer and private drafted or detailed for the service of the state, or of the United States; muster, inspect, and march to the place of rendezvous, every detachment of detailed militia, and forward a complete return of them to the assistant adjutant-general; he shall distribute to the captains or commanding officers of his regiment, such forms of returns, as the assistant adjutant-general may furnish him with; and each adjutant shall receive such compensation as the regimental court-martial shall think proper for his services, to be paid by the paymaster out of the fines collected, on order from the president of such court.

Regiment and battalion muster.

Duties of adjutants of regiments.

Compensation.

Sec. 25. *And be it further enacted*, That it shall be the duty of the quartermaster to attend all regimental and battalion

Quartermaster's duty.

musters, and under the direction of the commanding officer, choose a place of parade, and with a guard prevent disturbances from spectators; he shall, on order from the commanding officer of the regiment, purchase instruments of music, colours, &c. and draw on the paymaster for the same.

Duty of paymaster.

SEC. 26. *And be it further enacted*, That it shall be the duty of the paymaster to attend regimental and battalion musters, and aid in the execution of the orders of the commanding officer; he shall receive all moneys collected for fines by the sheriff or constable, and receipt for the same; he shall account to the regimental court-martial at every annual session, for the amount of fines received, and how expended; he shall, on order from the president of the regimental court martial, pay the quartermaster and adjutant for expenses and services: the regimental paymaster shall retain six per centum out of the moneys received, as compensation.

Compensation.

Rank of adjutant, quarter and paymaster. Staff.

SEC. 27. *And be it further enacted*, That the adjutant, quartermaster, and paymaster, shall rank as lieutenants; and the regimental staff, in addition to them, shall consist of a regimental surgeon, two surgeon's mates, a sergeant major, a quartermaster sergeant, a drum major, and fife major.

Duty of company officers.

SEC. 28. *And be it further enacted*, That the commanding officers of companies shall hold four company musters annually; and shall give at least five days notice through the orderly sergeant of the company, of any company, battalion, or regimental muster, or a notice given at one muster of the next company, battalion, or regimental muster, shall be deemed sufficient notice of the same; he shall note down all delinquents at company musters, and make a return on honour thereof to the company court-martial; and, in like manner, make return of delinquents at battalion or regimental musters, to battalion or regimental courts-martial; he shall cause the company to be drilled in conformity to the instructions governing the infantry of the United States.

Fines, how assessed.

SEC. 29. *And be it further enacted*, That the following fines shall be assessed on officers and privates failing to perform any of the duties required by this act: On a major or brigadier-general, not less than twenty, nor more than five hundred dollars; on a colonel, not less than fifteen, nor more than three hundred dollars; on a lieutenant colonel or major, not less than ten, nor more than two hundred dollars; on a captain, not less than eight, nor more than one hundred and fifty dollars; on a lieutenant or ensign, not less than six, nor more than one hundred dollars; on any of the regimental staff, not less than six, nor more than one hundred dollars; on non-commissioned officers, not less than two, nor more than fifty dollars; on privates, not less than one, nor more than ten dollars.

Non-commissioned officers, how appointed.

SEC. 30. *And be it further enacted*, That any officer commanding a company, shall have power to appoint the non-commissioned officers of his company; and any non-commissioned officer so appointed and refusing to act, shall be fined five dollars.

SEC. 31. *And be it further enacted*, That the colonel or officer commanding a regiment, shall have power to appoint his regimental staff, which shall consist of one adjutant, one quartermaster, and a paymaster, who shall perform such duties as are performed by paymasters in the army of the United States, and who shall give bond with security for the faithful performance of his duty, in the sum of five hundred dollars to the governor; and it shall be the duty of the colonel or officer taking such bond, to transmit the same to the secretary of state's office: the colonel or officer commanding a regiment, shall also have power to appoint one surgeon and two mates: The adjutant, quartermaster, and paymaster, shall be commissioned by the governor.

Regimental staff, &c. how appointed.

Paymaster to give bond.

SEC. 32. *And be it further enacted*, Tha. any non-commissioned officer or private of the militia, who shall refuse to turn out on the order of his proper officer, in case of insurrection, invasion, or alarm, shall be fined in any sum not less than one hundred, nor more than five hundred dollars.

Refusal to turn out in case of alarm, how fined.

SEC. 33. *And be it further enacted*, That any non-commissioned officer or private, who shall refuse when drafted, and ordered to repair to the place of rendezvous, shall suffer death, or such other punishment as a court-martial may inflict.

Refusal when drafted, how punished.

SEC. 34. *And be it further enacted*, That all fines incurred by authority of this act, shall be returned by the president of the court-martial before whom such fines may be assessed, to the constable of the company in whose limits the offender may reside, or to the sheriff of the county, for collection; and also a certified copy of the same to the paymaster of the regiment: The certificate of the president shall be a sufficient warrant to the constable or sheriff, for collection of the same, and the constable or sheriff shall be further required to collect and pay over to the regimental paymaster all such fines within forty days after receiving the authority for collection, and take a receipt from the paymaster for the same; if no property be found, the defaulter may be seized and committed to jail, until the fine be paid: *Provided, however*, that all reasonable excuses shall be heard by the court, when the party accused shall appear to give the same; *And provided also*, if the said defaulter shall swear before any justice of the peace, that he is not worth the amount of the fine, he shall be released, and the sheriff or constable shall be allowed such fees as the law allows in other claims of the same amount; and should the said constable or sheriff fail to pay over or account to the paymaster within the time required by this act, for the amount of fines assessed and returned to him as afosesaid, the paymaster shall, and he is hereby authorized and required to commence a suit against the said constable or sheriff for the amount of the fines not accounted for, before any court having jurisdiction thereof: and should the said paymaster fail in the prosecution of any suit as aforesaid, against the constable or sheriff, he is authorized to pay the costs out of any moneys he may have in possession on account of fines.

Fines, how collected.

Proviso.

Sheriffs, &c. failing to pay over fines collected, how proceeded against.

Regimental, &c. courts-martial, how appointed.

SEC. 35. *And be it further enacted*, That the commanding officers of regiments and battalions shall, after their respective regimental or battalion musters, detail a regimental or battalion court-martial, as the case may be, to convene within twenty days thereafter, for the trial of such persons as may be brought before it, giving at least five days notice to each defaulter: it shall be the duty of the officer ordering the court to appoint the adjutant, or such person as he may think proper, who shall act as judge advocate to said court: no officer shall be a member of the court-martial while he is a defaulter.

Officers and privates exempt from arms, &c.

SEC. 36. *And be it further enacted*, That no officer or private shall be arrested by any civil process while going to, continuing at, or returning from any muster or court-martial, or other military meeting; and any arrest, process, or execution on the person, at such times, is hereby declared void. All persons liable to do militia duty, going to, or returning from any muster or court-martial, shall pass all ferries, bridges, and turnpikes, free of expense.

Bystanders confined, and privates in certain cases fined.

SEC. 37. *And be it further enacted*, That any officer may put into confinement for the day, any bystander that may interrupt the muster, drill, or court-martial: and any person enrolled appearing at any muster or drill, shall be ordered into ranks; and, if he refuses, shall be put into confinement for the day, and fined as a defaulter; and no person shall be exempted from military duty, unless in the opinion of a regimental court-martial, he shall be wholly unfit for service; and if the court have doubts, they may require the opinion of the regimental surgeon; as soon, however, as such inability may be removed, he shall again be ordered to duty.

Militia called into service, how paid and governed.

SEC. 38. *And be it further enacted*, That all militia called into actual service, shall be paid, provisioned, and governed as the United States troops are, and be subject to the rules and articles, for the government of the armies of the United States, whether such militia be accepted in the service of the United States or this state.

Substitutes liable to be drafted.

SEC. 39. *And be it further enacted*, That in case of a second draft before the tour of duty expires for which a substitute has been hired, the substitute shall stand his draft; and, if drafted, be liable to join the second detachment as soon as his former tour may expire; and in case of drafts, the requisitions shall call for officers, non-commissioned officers, and privates: *Provided always*, that any person furnishing a substitute shall be exempted from serving himself, but shall, notwithstanding, be compelled to attend company, battalion, and regimental musters, and perform patrol duty; and in the event of a second draft, should a substitute be drafted, before the former tour is performed, the person furnishing said substitute, shall perform his tour of duty, until the former has been performed, and the said substitute join the second detachment.

Proviso.

Person liable to do duty, give notice to commanders of company.

SEC. 40. *And be it further enacted*, That all persons liable to do military duty, moving into the bounds of a company, shall, within thirty days, or at the next muster after his arrival in said bounds, report himself to the commanding officer of said company, who shall immediately enrol him. Every person between the age of eighteen and forty-five years shall be compelled to do militia duty by the commanding officers of the company in whose bounds he may reside, until such person shall produce a certificate from the captain of some volunteer company that he is legally enrolled in such corps, and is equipped as the corps require. Who shall be enrolled.

SEC. 41. *And be it further enacted*, That there may be one company of volunteer light infantry or riflemen in each regiment, to consist of not less than forty, nor more than eighty privates; to be officered in the same manner as other companies of the regiment are; the non-commissioned officers and privates of the said companies shall be liable to do patrol duty within the limits of the militia companies in which they may reside; they may choose their own uniform, and no volunteer company shall be raised for a shorter period than two years: *Provided*, that no military company shall be reduced to a less number of privates than forty, by raising such volunteer company. Light infantry and riflemen. Proviso.

SEC. 42. *And be it further enacted*, That there may be one troop of cavalry and one company of artillery in each regiment, organized in the same manner, and liable to perform the same duties as other volunteer companies. Cavalry and artillery.

SEC. 43. *And be it further enacted*, That when any vacancy occurs in a regiment, it shall be filled in the following manner: when in the office of colonel, the brigadier-general shall issue a a writ of election to the sheriff, giving thirty days notice of, and appointing the time of holding such election; the colonel commandant shall in like manner provide for the election of lieutenant colonels and majors; and the said sheriff shall advertise the said elections in at least six of the most public places, and open a poll at the several election precincts, within the limits of the regiment in which said election shall take place; and shall make his return thereof in the same manner as is made in elections of general officers; lieutenant colonels and majors shall order election for company officers within their respective battalions, and shall appoint the place of holding said elections, within the company district where such vacancy may be, giving at least fifteen days notice thereof, and appoint a superintendent of the same, who shall make a return of the poll of said election to the commanding officer of the regiment, a statement of which shall be by him transmitted to the executive office. Vacancies in regiments, how filled.

SEC. 44. *And be it further enacted*, That when any officer is elected in the mode pointed out by this act, the opposing candidate after such election has been held, if he thinks himself aggrieved, and shall think proper to contest the election, he shall notify the officer ordering the same, in writing, within ten days after said election; and the officer ordering said election, shall order a regimental or battalion court-martial, as the case may be, which shall decide the contest: the president of the Contesting elections.

court shall transmit the decision of the court to the secretary of state; but if the election shall be set aside by the decision of the said court, the president thereof shall transmit the said decision to the officer ordering the said election, who shall forthwith order a new election.

Arms, &c. exempted from seizure.

SEC. 45. *And be it further enacted*, That all arms and accoutrements of the militia of this state, shall be exempted from distress, either by attachment, execution, or other legal process.

Company courts-martial, how held.

Persons aggrieved may appeal.

SEC. 46. *And be it further enacted*, That company courts-martial shall be holden within ten days after the regular muster day of each company, at the usual muster ground, for the trial of delinquents; the company court-martial shall consist of two or more commissioned officers; and the commanding officer shall detail said court, and give notice at each muster, of the time and place of holding such court, which shall be deemed a legal notice to delinquents: an appeal from the decision of said courts may lie to the battalion court-martial; the delinquent shall notify the court during their session of his intention to appeal from their decision to the said battalion court-martial, and the officers holding the said company court-martial shall furnish the said battalion court-martial with the proceedings in the case; and if the decision shall be confirmed against the delinquent, he shall be fined in double the amount of the judgment of the company court-martial.

Regiments and battalions, how changed.

SEC. 47. *And be it further enacted*, That regiments and battalions may be changed by a general court-martial, or regimental court-martial, as the case may be, for the internal regulation of either.

Mode of proceedings against delinquents who move out of the county.

SEC. 48. *And be it further enacted*, That should any person who has been fined according to the provisions of this act, remove out of the county in which said fine was assessed, the amount of the said fine shall be forwarded to the sheriff of the county into which the delinquent has removed, by the constable of the company or sheriff of the county from which the delinquent had removed; and the sheriff to whom such return is made, shall proceed forthwith to make the money within thirty days, and cause the same to be paid over to the paymaster of the regiment from which said delinquent removed, after retaining such commissions as are granted for the collection of such sums in other cases.

Uniform in the army of the U. States to be the uniform of this state.

SEC. 49. *And be it further enacted*, That the uniform of the officers of the militia of this state, shall be the same as the uniform of officers of the same grade of the army of the United States; and it shall be the duty of the adjutant-general to furnish without delay to the assistant adjutant-general of each brigade, a statement regulating the uniform of the militia of this state, agreeably to this act, identifying the different articles of the same: *Provided*, That no platoon officer shall be required to change the uniform which he now has, nor shall any platoon officer be subject to fine for not being in uniform, or field or general officer for wearing lace, or for not wearing chapeau-de-bras; and that all officers may wear red or black sword belts as well as white.

SEC. 50. *And be it further enacted*, That all fines assessed by any company court-martial, and paid over to the paymaster of the regiment, shall be applied exclusively to the purchase of music, colours, hiring musicians, &c. for the use of the said company: *Provided, however*, That all fines assessed and collected by any company court-martial from defaulters at battalion and regimental musters, shall be paid as heretofore to the paymaster, for the use of the regiment.

Company fines to be applied to the purchase of music, &c.

SEC. 51. *And be it further enacted*, That courts-martial shall hereafter have the same power to compel the attendance of witnesses, as are vested in the courts of law and equity in this state.

Courts-martial may compel attendance of witnesses.

SEC. 52. *And be it further enacted*, That no allowance shall be given to officers, for services rendered as members of any court-martial whatever.

No compensation to officers.

SEC. 53. *And be it further enacted*, That in all cases where returns have been or shall hereafter be made to the secretary of state, the governor shall commission accordingly; and in all returns upon which commissions are to be issued, if to fill vacancies, the name of the person and cause of such vacancy, shall be stated in said return; if an original appointment, the return shall so express it.

Returns, how made.

SEC. 54. *And be it further enacted*, That if any officer whatever shall absent himself from his command at any one time, for a longer period than twelve months, unless furloughed by the commanding officer of the regiment, brigade, division, or of the state, as the case may be, his office shall be considered vacated, and shall be filled as provided for by law in other cases of vacancies.

Officers shall vacate if absent twelve months.

SEC. 55. *And be it further enacted*, That the judge-advocates hereafter appointed to general courts-martial, shall be allowed the sum of five dollars per day, for each day they may be actually engaged in completing the records of the same; and the president's certificate shall be deemed a sufficient voucher to the treasurer of the state, for the payment of the same.

Judge advocate's compensation.

SEC. 56. *And be it further enacted*, That the assistant adjutant-generals shall be allowed the sum of three dollars for every thirty miles travelling to and from their residence in attending the several regimental musters, as now provided for by law; and five dollars for each day's attendance at drill, musters, and reviews, to be paid out of any money in the treasury not otherwise appropriated, upon the certificate of the brigadier-general: *Provided*, They shall receive no pay, unless they make return of the strength of their brigades to the adjutant-general, so as to enable him to make a return to the war department, of the strength of this state.

Assistant adjutant-general's compensation.

Proviso.

SEC. 57. *And be it further enacted*, That the allowance made to brigade-majors for travelling expenses by an act passed at the last session of the general assembly, shall be paid out of any money in the treasury not otherwise appropriated, on the certificate of the brigadier-general.

Brigade majors, how paid.

Line between the 1st and 35th regiments.

SEC. 58. *And be it further enacted*, That the boundary line between the counties of Jackson and Decatur, as the same is or hereafter may be established, shall be the line between the first and thirty-fifth regiments.

Between the 6th and 39th regiments.

SEC. 59. *And be it further enacted*, That the line, dividing the line dividing the third and fourth ranges west, in Morgan county, shall be the dividing line between the sixth and thirty-ninth regiments; the western regiment to be the thirty-ninth; and it shall be the duty of the brigadier-general to issue a writ of election for a colonel of said regiment, who, so soon as he is elected and qualified, shall proceed to organize his regiment.

Colonel's election of 39th regiment.

This act to be printed.

SEC. 60. *And be it further enacted*, That the secretary of state cause this act and the patrol laws of this state to be printed together in a pamphlet, separate from the other acts of the general assembly; and that he is hereby authorized to cause the same to be distributed to the several commissioned officers of this state: *Provided*, That nothing in this act shall be so construed as to authorize a court-martial to levy a fine on any person who attends muster without a gun, if such person will make oath that he has no gun, and that he is unable to purchase a gun without injury to himself or family.

Proviso. Persons unable to purchase a gun, exempt from fine.

Tenth brigade formed.

SEC. 61. *And be it further enacted*, That the militia of Jackson and Decatur counties, which now compose the first and thirty-fifth regiments, be, and they are hereby formed into a separate brigade, to be called the tenth brigade; which is attached to the first division of the militia of this state; and it shall be the duty of the major-general of said division, and he is hereby required, on or before the first day of April next, to issue orders for an election of a brigadier-general to command said brigade, as is prescribed by the provisions of this act.

Brigadier general to be elected therefor.

Boundary lines altered.

SEC. 62. *And be it further enacted*, That the boundary lines of no captain's beat shall hereafter be altered but with the consent of a regimental court-martial.

Brigade court-martial constituted of a majority of officers therein.

SEC. 63. *And be it further enacted*, That a majority of the officers of each brigade shall constitute a brigade court-martial, when convened for that purpose by the brigadier-general of each brigade.

Regimental and battalion courts-martial.

SEC. 64. *And be it further enacted*, That regimental and battalion courts-martial, shall require a majority of the commissioned officers of the regiment or battalion to constitute a court.

NOTE.—Former Acts passed upon the subject of the militia not expressly repealed, are retained in this digest; because as there is no repealing clause in the present act, the editor did not believe it to be his duty to determine what laws were meant to be set aside by the act of 1822. In truth, the repealing clause usually appended to all former general laws upon this subject, is expressed in terms so vague as leaves no other alternative but to embody the whole.

CHAPTER XVII.

An Act to exempt certain Persons therein mentioned from serving in the Militia of this State.—*Passed December* 31, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the persons belonging to and serving in *The Fire Engine Company Neptune*, number two, in the city of Mobile, be, and they are hereby exempted from serving and performing militia duty in this state, except in time of war, invasion, or insurrection: *Provided*, That the said fire engine company shall not at any time exceed thirty-six members.

MILLS AND MILLERS.—1811.

CHAPTER I.

An Act to encourage the building of Public Mills, and directing the Duties of Millers.—*Passed December* 7, 1811.

Public mills.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That every water grist-mill already built, or which shall hereafter be built, and which hath, or shall at any time grind for toll, shall be deemed and held, and is hereby declared to be a public mill.

[SEC. 2. Relates to the mode of proceeding in applying to the county court for leave to build a mill where the applicant has land on one side only.

SEC. 3. Provides that the person to whom leave is granted, shall pay down in court the value of an acre condemned.

SEC. 5. Enacts that the building shall be begun within one year, and finished within three years.

SEC. 6. Three years given to repair any mill burnt, or otherwise destroyed. All repealed in 1812.]

Nuisances.

SEC. 4. *And be it further enacted*, That it shall not be lawful for any person to erect a mill so as to overflow any other mill, or create a nuisance to the neighbourhood, any thing herein contained to the contrary notwithstanding.

Persons aggrieved by the determination of county courts may appeal to superior courts.

SEC. 7. *And be it further enacted*, That if any person shall think himself aggrieved by the determination of the county court, he may appeal therefrom to the next superior court, for the district in which the land doth lie, which court shall, and is hereby authorized and empowered to take cognizance of the same, and to confirm such order, or reverse the same, and to give such judgment therein as may appear reasonable and right.

Tolls or rates fixed by county courts.

SEC. 8. *And be it further enacted,* That the tolls, or rates for grinding at the several water grist-mills within this territory, shall be fixed by the county courts of the county in which the mills may be.

To grind according to turn, &c.

SEC. 9. *And be it further enacted,* That all mills shall grind according to turn, and shall well and sufficiently grind the grain brought thereto, if water will permit, and every miller or keeper of a mill, making default herein, viz. not grinding according to turn, nor well and sufficiently grinding the grain, if water will permit as aforesaid, or exacting or taking more toll than is herein mentioned, shall, for every such offence, forfeit and pay five dollars to the party injured, to be recovered before any justice of the peace, in the county where such offence is committed, with costs: *Provided nevertheless,* That it shall be in the power of any such owner to grind, or cause to be ground, his own grain, at any time he thinks proper, any thing in this act to the contrary notwithstanding.

CHAPTER II.

An Act to amend an Act, entitled "An Act to encourage the Building of Public Mills, and directing the Duties of Millers.—*Passed December* 14, 1812.

Public mills.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That any person owning lands on one side of any water course, and desiring to build a water grist-mill, saw-mill, cotton-gin, or other useful water-works, on such lands, and to erect a dam across the same for working said mill, shall not himself have the fee simple property in the lands on the opposite side thereof against which he would abut his dam, or if he should have lands adjoining others through which it may be necessary to dig a ditch or canal, in order to erect such mill on his own lands, he shall make application for a writ of *ad quod damnum* to the clerk of the county court of the county wherein the lands proposed for the abutment, ditch, or canal are, which clerk shall thereupon issue such process, directed to the sheriff of the said county, commanding him to summon and empannel seven freeholders or landholders, to meet upon the lands so proposed for the abutment, ditch, or canal, on a certain day, to be named by the clerk, and inserted in the said writ, of which ten days previous notice shall be given by the sheriff to the proprietor, his agent, or tenant.

Empannelment of seven freeholders, &c.

To view lands, and other duties prescribed.

SEC. 2. *And be it further enacted,* That the freeholders or landholders so taken, shall be charged by the sheriff impartially, and to the best of their skill and judgment, to view the said land so proposed for the abutment, and to locate and circumscribe by certain metes and bounds, one acre thereof, having due regard therein to the interest of both parties, and to appraise the same according to its true value, to examine the lands above and below of the property of others, which may probably be overflowed, and to say what damage it will be of to the several proprietors, and whether the mansion-house of any such proprietors, offices, curtiledges, or gardens thereunto immediately belonging, or orchards will be overflowed, to inquire whether in their opinion, the health of the neighbours will be materially annoyed by the stagnation of the waters, and if it be a ditch or canal, proposed through another's land, then to inquire what damage the same may be to the proprietor, and assess the same accordingly.

SEC. 3. *And be it further enacted*, That the inquest so made and sealed by the said jurors, or a majority of them, together with the writ, shall be returned by the sheriff to the succeeding county or intermediate court, who shall thereupon order summonses to be issued to the several persons, proprietors, or tenants of the land so located or found liable to damage, if they be to be found within the county, and if not, then to their agents therein, if any they have, to show cause why the party applying should not have leave to build said mill and dam.

SEC. 4. *And be it further enacted*, That if the lands above proposed for the abutment, ditch, or canal, should be the property of an infant, or *non compos mentis*, then the notices heretofore directed to be given, shall be given to his guardian, if any he hath, if not, then it shall be the duty of the orphans' court, to appoint one to whom such notices may be given; and if said lands shall belong to non-residents, the notices before required shall be published three weeks successively in the nearest gazette, which shall be deemed as good and effectual as if served on the parties personally.

SEC. 5. *And be it further enacted*, That in like manner, if the person proposing to build such mill and dam, shall have the property in the lands on both sides the stream, yet application shall be made to the clerk of the county court, wherein the mill-house will stand, for a like writ, which writ shall be directed, executed, and returned, as prescribed in the former case.

SEC. 6. *And be it further enacted*, That if, on such inquest or other evidence, it shall appear to the court that the mansion house of any proprietor, or the offices, curtiledges, or garden thereunto immediately belonging, or orchards will be overflowed, or the health of the neighbours will be materially annoyed, they shall not give leave to build said mill and dam, but if these injuries are not likely to ensue, leave shall be given as aforesaid.

SEC. 7. *And be it further enacted*, That if the party applying obtain leave to build said mill and dam, he shall, upon paying respectively to the several parties entitled to receive the same, the value of the acre so located, and the damages which the jurors find will be done by overflowing the lands, above or below, or both, by the ditch or canal, become seized in fee simple of said acre of land, and as much as may be necessary for such ditch or canal; but if he shall not within one year thereafter, begin to build the said mill, and finish the same within three years; and afterward continue it in good repair for public use; or in case the said mill or dam be destroyed, he shall not commence the rebuilding within one year after such destruction, and finish it within three years, the said acre shall revert to the former proprietor, and his heirs, unless at the time of such destruction of the said mill or dam, the owner thereof be an infant, *feme covert*, imprisoned, or of unsound mind, in which case he shall be allowed the same terms for commencing and completing the said mill or dam, after such disability is removed.

Sec. 8. *And be it further enacted*, That when any owner of a mill heretofore or hereafter established by law, may think necessary to raise his dam, the clerk of the county court of the county wherein the pond lieth, upon application to them, shall grant a second writ of *ad quod damnum*, to value the additional damage done thereby, and under the same rules and regulations as herein before directed.

Repealing clause.

Sec. 9. *And be it further enacted*, That the second, third, fifth, and sixth sections of the act to which this is an amendment, be, and the same are hereby repealed.

CHAPTER III.

An Act to point out the Duties of Owners and Keepers of Water-mills, who grind Grain for Toll.—*Passed December* 9, 1820.

Duty of owners of mills.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the first day of March, 1821, it shall be the duty of all owners of mills, or person or persons employed in keeping a mill within this state, who grind grain for toll, to grind each turn in rotation as they are received in the mill, and shall grind all grain well if water will permit, and may take and receive one-eighth part of the grain so ground for toll, and no more.

Penalty.

Sec. 2. *And be it further enacted*, That if any person or persons shall commit any offence against the provisions of this act, he, she, or they shall, on conviction, forfeit and pay the sum of ten dollars, with costs, for every such offence, to be recovered before any justice of the peace in the county where such offence may be committed; and the money so recovered shall be paid over to the person who may sue for the same: *Provided*, that nothing in this act shall prohibit any owner of a mill from grinding his own grain at any time.

Note.—Special Laws authorizing individuals to erect Mills on water courses therein mentioned, will be found under title "Rivers and Creeks."

NEGROES AND MULATTOES, BOND AND FREE.—1805.

CHAPTER I.

An Act respecting Slaves.—*Passed March* 6, 1805.

In what case slaves may be witnesses.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That no slave shall be admitted a witness against any person, in any matter, cause, or thing whatsoever, civil or criminal, except in criminal cases, in which the evidence of one slave shall be admitted for or against another slave.

Slaves not to go from home without pass.

SEC. 2. *And be it further enacted,* That no slave shall go from the tenement of his master, or other person with whom he lives, without a pass, or some letter, or token, whereby it may appear that he is proceeding by authority from his master, employer, or overseer; if he does, it shall be lawful for any person to apprehend and carry him before a justice of the peace, to be by his order punished with stripes, or not, in his discretion, not exceeding twenty stripes.

Nor upon the plantation of any person without leave in writing.

SEC. 3. *And be it further enacted,* That if any slave shall presume to come and be upon the plantation of any person whatsoever, without leave in writing from his or her owner or overseer, not being sent upon lawful business, it shall be lawful for the owner or overseer of such plantation, to give or order such slave ten lashes on his or her bare back, for every such offence.

Slaves not to carry offensive or defensive weapons.

SEC. 4. *And be it further enacted,* That no slave shall keep or carry any gun, powder, shot, club, or other weapon whatsoever, offensive or defensive, except the tools given him to work with, or that he is ordered by his master, mistress, or overseer, to carry the said articles from one place to another, but all and every gun, weapon, or ammunition, found in the possession or custody of any slave, may be seized by any person, and upon due proof made thereof, before any justice of the peace of the county or corporation where such seizure shall be made, shall, by his order, be forfeited to the seizer, for his own use; and moreover, every such offender shall have and receive, by order of such justice, any number of lashes, not exceeding thirty-nine, on his bare back for every such offence: *Provided nevertheless,* That any justice of the peace may grant, in his proper county, permission in writing to any slave, on application of his master or overseer, to carry and use a gun and ammunition within the limits of his said master's or owner's plantation, for a term not exceeding one year, and revocable at any time within such term, at the discretion of the said justice, and to prevent the inconveniences arising from the meeting of slaves.

In what cases they may get leave to carry gun.

Penalty on persons permitting slaves not their own to remain on their plantations.

SEC. 5. *And be it further enacted*, That if any master, mistress, or overseer of a family, shall knowingly permit or suffer any slave, not belonging to him or her, to be and remain in or about his or her house or kitchen, or upon his or her plantation, above four hours at any one time, without leave of the owner or overseer of such slaves, he or she so permitting, shall forfeit and pay ten dollars for every such offence; and every owner or overseer of a plantation who shall so permit or suffer more than five negroes or slaves, other than his or her own, to be and remain upon his or her plantation or quarter at any one time, shall forfeit and pay ten dollars for each negro or slave above that number, which said several forfeitures shall be to the informer, and recoverable with costs, before any justice of the peace of the county or corporation where such offence shall be committed: *Provided always*, That nothing herein contained shall be construed to prohibit the negroes or slaves of one and the same owner, though seated at different quarters, from meeting with their owner's or overseer's leave, upon any plantation to such owner belonging, nor to restrain the meeting of slaves on their owner's or overseer's business, at any public mill, nor to prohibit their meeting on any other lawful occasion, by license in writing from their owner or overseer, nor their going to church, and attending divine service on the Lord's day, and between sunrising and sunsetting.

Riots, &c. by slaves, how punishable.

SEC. 6. *And be it further enacted*, That riots, routs, unlawful assemblies, trespasses, and seditious speeches, by a slave, or slaves, shall be punished with stripes, not exceeding thirty-nine, at the discretion of a justice of the peace; and he who will, may apprehend and carry him, her, or them, before such justice.

Penalty on white persons being found in company with slaves at their unlawful meetings.

SEC. 7. *And be it further enacted*, That if any white person, free negro, or mulatto, shall at any time be found in company with slaves, at any unlawful meeting, or shall harbour, or entertain any slave, without the consent of his or her owner, such person being thereof convicted before any justice of the peace, shall forfeit and pay twenty dollars for every such offence to the informer, recoverable with costs before such justice.

Powers of justices of peace in case of such unlawful meetings.

SEC. 8. *And be it further enacted*, That every justice of the peace, upon his own knowledge of such unlawful meeting, or information thereof to him made within ten days after, shall issue his warrant to apprehend the persons so met or assembled, and cause them to be brought before himself, or some other justice of his county or corporation, to be dealt with as this act directs; and every justice failing herein, shall forfeit and pay ten dollars for every such failure; and every sheriff or other officer, who shall fail, upon knowledge or information of such meeting, to endeavour to suppress the same, and bring the offenders before some justice of the peace to receive due punishment, shall be liable to the like penalty of ten dollars; both which penalties shall be to the informer, and recoverable with costs, by action of debt, in any county or corporation court; and every under sheriff, or constable, who, upon knowledge or information of such meeting, shall fail to perform his duty in suppressing the same, and apprehending the persons so assembled, shall forfeit and pay ten dollars for every such failure to the informer, recoverable with costs, before any justice of the county or corporation wherein such failure shall be.

Trading with slaves prohibited.

SEC. 9. *And be it further enacted,* That no person whatsoever shall buy, sell, or receive of, to, or from a slave, any commodity whatsoever, without the leave or consent of the master, owner, or overseer of such slave, expressive of the articles so permitted to be bought, sold, or bartered.

And if any person shall presume to deal with any slave, without such leave or consent, he or she so offending, shall forfeit and pay to the master or owner of such slave, four times the value of the thing so bought, sold, or received, to be recovered with costs by action upon the case, in any court having cognizance of the same within this territory, and shall also forfeit and pay the further sum of twenty dollars, to any person who will sue for the same, with costs before any justice of the peace; or on failure or refusal so to pay, shall, by order of such justice, be committed to prison, until he or she make such payment; and any slave offering to sell any article without leave in writing; from his master or owner, shall receive ten lashes, by order of any justice of the peace before whom he or she is convicted.

Masters not to license their slaves to trade,

SEC. 10. *And be it further enacted,* That if any master or owner of a slave, shall license such slave to go at large and trade as a freeman, the master or owner shall forfeit and pay the sum of fifty dollars, one moiety to the use of any person suing for the same, and the other moiety to the use of the territory; and if after conviction such slave shall be found so going at large and trading, the master or overseer shall again be liable to the like penalty, to be recovered as aforesaid, and so, as often after conviction as such slave shall be found so going at large and trading.

or to go at large to hire him or herself.

SEC. 11. *And be it further enacted,* That if any person shall permit his or her slave to go at large, or hire him, or herself out, every person or persons so offending, shall forfeit and pay to the use of the territory the sum of fifty dollars, and it shall be lawful for any person to apprehend and carry such slave before a justice of the peace, in the county or corporation where apprehended, and if it shall appear to the justice that such slave comes within the purview of this act, he shall order him or her to the jail of the county or corporation, there to be safely kept until the next court, when, if it shall be made to appear to the court, that the slave so ordered to jail hath been permitted or suffered to hire him or herself out, contrary to the meaning of this act, the court shall immediately proceed to enter up judgment, and award execution against such offender, for the amount of said forfeiture with costs: *Provided,* that if the owner or holder of such slave or slaves shall enter into bond before said justice, payable to the governor and his successors in office, with sufficient security, in double the amount of said forfeiture, conditioned to appear at the next county court of the proper county, to do and receive what shall be enjoined him by the court, then and in that case, such slave may be suffered to remain with his or her owner.

Runaway slaves, how to be dealt with.

Sec. 12. *And be it further enacted*, That all runaway slaves may be lawfully apprehended by any person, and carried before the next justice of the peace, who shall either commit them to the county jail, or send them to the owner, if known, who shall pay for every slave, so taken up, the sum of six dollars to the person apprehending him or her, and also all reasonable costs and charges. And in order to establish what slaves shall be considered as runaways; if any slave shall absent him or herself, from his or her usual place of residence, or owner's service, without leave, the owner or overseer shall be obliged to give in to the next justice of the peace the name with a description of the person of such slave, within ten days after such slave shall have absented him or herself; all such slaves so reported, shall be considered as runaways; and the person apprehending him, her, or them, shall be entitled to the above reward. And if any master, mistress, or overseer, shall neglect to give in the information above required, such master, mistress, or overseer, shall forfeit and pay one dollar for each day that such information shall have been omitted, which penalty shall be recoverable before any justice of the peace by such person as shall sue for the same. And whereas many times slaves run away and lie out, hid, and lurking in swamps, woods, and other obscure places, killing hogs, and committing other injuries to the inhabitants of this territory: Therefore,

What slaves to be considered as runaways.

Further powers of justices as to out-lying runaway slaves.

Sec. 13. *Be it further enacted*, That in all such cases, upon intelligence given of two or more slaves lying out as aforesaid, any one justice of the peace, of the county where the slaves are supposed to lurk, or to do mischief, shall be, and are empowered and required, by warrant, reciting their names and owner's names, if known, to direct the provost of the patrols to take such power with him as he shall think fit and necessary for the effectual apprehending of such out-lying slave or slaves, and go in search of them, and upon their being apprehended, to commit them, or any of them, to the jail of his county for further trial; and for every such out-lying slave by him apprehended and committed to jail as aforesaid, he shall be entitled to a reward of thirty dollars, to be paid out of the territorial treasury, three-fourths of which sum shall be reimbursed to the treasury by the owner of such slave: *Provided*, That if the owner be an inhabitant of this territory, the said sum shall be added to his tax for the current year, and be collected and accounted for in the same manner as other public taxes are: *And provided also*, that any other person or persons who shall apprehend and commit to jail as aforesaid, any out-lying slave, he or they shall be entitled to the same reward for every such apprehension and commitment.

Slaves not to keep dogs.

Sec. 14. *And be it further enacted*, That all slaves be prohibited from keeping dogs, under any pretence or consideration whatsoever, and the slave or slaves so offending, upon complaint thereof before any justice of the peace, shall be punished with not exceeding twenty-five stripes for every such offence, and the master or owner who shall permit his slaves to keep dogs contrary to this law, shall forfeit and pay the sum of five dollars for each and every dog so kept, to and for the use of the person complaining; and moreover, shall make good all damages done by dogs appertaining to, or kept by any of his or her slaves.

Not to own any horse or mare.

SEC. 15. *And be it further enacted*, That no slaves shall be allowed to own any horse, mare, gelding, or mule, and if any slave shall actually own such property, the same shall be forfeited, and sold under the direction of the court of the county where such property shall be so owned; one moiety of the proceeds for the use of the territory, and the other moiety to any person who will sue for the same. It is also fordidden to slaves to keep hogs running at large, or to keep in enclosures more than they can conveniently maintain, the number of which to be regulated by the several owners, and to be distinctly marked, and register thereof made for the inspection of any person who shall require to see the same: *And whereas*, it has been the humane policy of all civilized nations, where slavery has been permitted, to protect this useful but degraded class of men from cruelty and oppression: Therefore,

In what manner they may keep hogs.

No cruel or unusual punishment to be inflicted on slaves.

SEC. 16. *Be it further enacted*, That no cruel or unusual punishment shall be inflicted on any slave within this territory. And any owner of slaves authorizing or permitting the same, shall, on conviction thereof, before any court having cognizance, be fined according to the nature of the offence, and at the discretion of the court, in any sum not exceeding two hundred dollars, to, and for the use of this territory.

No slave to lift his hand against white persons.

[*SEC. 17. *And be it further enacted*, That if any slave shall at any time lift his or her hand in opposition to any white person, he or she so offending shall, for every such offence, upon conviction before a justice of the peace of the county where such offence shall be committed, receive not exceeding twenty lashes, on his or her bare back, well laid on, by order of such justice.]

Penalty thereon.

In case of rebellion.

SEC. 18. *And be it further enacted*, That if any slave shall, at any time, consult, advise, or conspire to rebel, or make insurrection, or shall plot, or conspire the murder of any person or persons whatsoever, every such consulting, plotting, or conspiring shall be adjudged and deemed felony, and the slave or slaves convicted thereof, in manner herein after directed, shall suffer death.†

And how for felony and capital offences.

SEC. 20. *And be it further enacted*, That the trial of a slave for felony, or any capital offence, shall be in all respects similar to the trial of a free citizen or inhabitant, for the like offence, except that the jury, or two-thirds at least thereof, empannelled for such trial, shall be composed of owners of slaves. And the court may take for evidence the confession of the offender, the oath of one or more credible witnesses, or such testimony of slaves, or negroes, with pregnant circumstances, as to them shall seem convincing.

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* Repealed in January, 1814.

† The act ends here; *query* as to the two next Sections.

In what case allowed benefit of clergy.

SEC. 21. *And be it further enacted*, That when any slave shall be convicted of any offence within the benefit of clergy, judgment of death shall not be given against him or her upon such conviction, but he or she shall be branded on the face or breast by the jailer in open court, and suffer such corporal punishment, as the court shall think fit to inflict, except where he or she once had the benefit of this act, and in those cases, such slave or negro shall suffer death without benefit of clergy.

In what not.

CHAPTER II.

An Act to prevent the Liberation of Slaves, only in cases hereafter named, and for other purposes.—*Passed July* 20, 1805.

Slaves not to be liberated, unless they have done some meritorious act.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That from and after the passing of this act, it shall not be lawful for any person or persons, holding or owning slaves, to liberate them, or any of them, unless they first prove to the satisfaction of the general assembly, that such slave or slaves have done some meritorious act, either for the benefit of said owner, or for the benefit of this territory, and in the said case the owner or owners of the said slave or slaves, shall first give bond and security, to the governor for the time being, that said slave or slaves shall not become chargeable to the public: *Provided nevertheless*, that all slaves so emancipated shall be liable to be taken by execution to satisfy any debt contracted by the person emancipating them, before such emancipation is made.

Liable for debts contracted previous to liberation.

Persons claiming slaves petitioning for their freedom, to give security for their appearance.

SEC. 2. *And be it further enacted*, That any slave in this territory, claiming his or her freedom, shall proceed by petition to the county or circuit court of the county where his or her master or owner shall reside, who, if the slave be in his or her possession, shall enter into bond with approved security to the governor, in a sum to be adjudged of by the court, that the said slave shall be forthcoming and subject to the order of said court, and that he will abide by the judgment the said court may render in the premises; in which case such slave shall remain in the service of his owner, or person claiming him or her, until the determination of the suit: and if out of the possession of his or her owner, or person claiming him or her, such slave shall enter into recognizance with sufficient security, to be approved of by the court, to make good to his or her owner all such costs and damages as he shall have incurred, in consequence of the application of such slave for the recovery of his freedom, in case he eventually fail in substantiating the same, and that he will be forthcoming, and abide the sentence of the said court.

Slave to enter into recognizance.

NOTE.—Section second was amended in 1815.

CHAPTER III.

An Act regulating the Importation of Slaves, and for other purposes.—*Passed March* 1, 1808.

Slaves imported for sale, how certified.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That from and after the first day of January, 1809, it shall not be lawful for any person or persons, importing slaves into this territory from any of the United States, or from any of the territories thereof, to expose to sale within the limits of this territory any slave, either negro, mulatto, or person of colour above the age of fifteen years, without having previously exhibited to the chief justice of the orphans' court of that county where such slave or slaves are offered for sale, a certificate signed by two respectable freeholders in the county of the state or territory from whence said negro, mulatto, or person of colour is brought, which certificate shall contain a particular description of the stature and complexion of said slave or slaves, together with the names and sex of the same, and shall furthermore certify, that neither the slave or slaves therein mentioned and described, have been guilty of or convicted of any crimes, either murder, burglary, arson, felony, or larceny, to their knowledge or belief, in the state or territory from whence said slave or slaves have been imported, which certificate shall be signed or acknowledged before the clerk of the county of the state or territory from whence said slaves are brought, and certified by said clerk that the persons whose signatures are affixed to said certificate, are respectable freeholders of said county and neighbourhood.

Certificate by whom to be signed.

Penalty.

SEC. 2. *And be it further enacted,* That if any person shall, from and after the first day of January, 1809, purchase or sell any slave, either negro, mulatto, or person of colour, without having complied with the provisions of the foregoing section, he, she, or they, so offending, shall pay the sum of one hundred dollars for every slave so sold or purchased, recoverable in any court having competent jurisdiction, one moiety to the territory, the other to the person prosecuting the same to effect.

Certificate to be registered in the orphans' court.

SEC. 3. *And be it further enacted,* That the seller or purchaser of any slave or slaves, brought into the territory after the first day of January, 1809, shall cause to be registered with the register of the orphans' court of that county where such slave or slaves are first sold, all certificates as aforesaid, the seller previously swearing that he believes the contents of the said certificate to be just and true, which oath said register is hereby authorized and required to administer, for which services he shall receive the usual fees for registering or recording, as is allowed by law to the clerks of the county courts of this territory.

Penalty for registering a fraudulent certificate.

SEC. 4. *And be it further enacted,* That if any seller of any slave or slaves, shall cause to be registered any fraudulent certificate of any slave or slaves, he, she, or they so offending, shall, for every slave so enumerated in said certificate, forfeit and pay the sum of five hundred dollars, recoverable in any court having competent jurisdiction; one moiety to the territory, and the other to the person prosecuting the same to effect, and shall moreover be subject to the pains and penalties of perjury.

Account on oath to be given of the number of slaves imported.

SEC. 5. *And be it further enacted*, That every person or persons, bringing and importing any slave or slaves into this territory, after the first day of January, 1809, shall, within five days after their arrival within the limits of the same, furnish to the clerk of the county court of that county where they may first land or arrive, an accurate account on oath, of all and every slave or slaves, by him, her, or them so imported or brought: whereupon it shall be the duty of said clerk to transmit copies of the said list or account, one to the assessor and inquirer for the county, and one to the auditor of public accounts.

Assessor and inquirer's duty.

SEC. 6. *And be it further enacted*, That it shall be the duty of said assessor and inquirer to assess on every slave contained in said list or account, the sum of five dollars, which sum or sums the tax collector of the county is hereby required, authorized, and directed to collect from the importer, master, or owner of said slaves, within thirty days after the arrival of the same into this territory, and account on oath within thirty days thereafter to the auditor of public accounts.

Further penalty.

SEC. 7. *And be it further enacted*, That if any person or persons, either owner, master, or importer of any slave, shall fail or refuse, from and after the said first day of January, 1809, to comply with the provisions of the foregoing section, he, she, or they so refusing, shall pay a double tax, for which the tax collector is hereby authorized and directed to issue his execution forthwith to the sheriff of the county, in the same manner as he is directed in the case of delinquents or defaulters on the tax list of the county.

SEC. 8. *And be it further enacted*, That the provisions, forfeitures, and requisitions of this act, as far as it relates to tax on slaves, shall not be construed so as to affect persons residing within this territory, or persons emigrating to the same for the purpose of being permanent inhabitants thereof.

CHAPTER IV.

An Act respecting Runaway Slaves committed to Jail.—*Passed December* 22, 1809.

Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, That where any slave is now in the jail of any county, or shall hereafter be committed to the jail of any county within this territory, as a runaway, and such runaway slave shall not be claimed and proved by the owner thereof within six months from the first publication of the commitment of such slave, in some newspaper published in this territory, it shall be lawful for the sheriff of the proper county to sell said runaway slave at public auction, at the court-house of his proper county, upon giving at least thirty days previous notice of such sale, by advertisement published in some newspaper in this territory, at the court-house of the proper county, and at least two other public places within the same; and out of the proceeds arising from the sale of any runaway slave as aforesaid, the sheriff shall be entitled to the same commission and fees as are allowed in cases of execution; and the balance, after paying all prison fees, and the maintenance of said runaway slave while in jail, shall be for the use of the proper county: *Provided*, That if the owner of such runaway slave shall, after such sale, prove his property in any such slave, the proper county shall pay to him the amount that shall have been paid into the county treasury, on account of the sale of such slave, but the right to any slave sold as aforesaid, shall be and remain vested in the purchaser under the sale made by the sheriff, as aforesaid, any law to the contrary notwithstanding.

CHAPTER V.

An Act to amend an Act, entitled "An Act establishing Patrols, and for other Purposes."—*Passed December* 18, 1812.

Duty of militia captains.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That it shall be the duty of every militia captain or commanding officer of a company, within this territory, to cause to be made, as soon as may be, after the passing of this act, a complete list of all male persons within his district, liable by the first section of the act to which this is an amendment, to perform patrol duty; including in the said list every person liable as aforesaid, whether belonging to the militia company under his command, or to any other militia or volunteer company; and in the said list, the said captain shall cause to be included, every person liable as aforesaid, who shall come to reside within his district, within ten days after such person shall so come to reside therein.

Leaders of patrol to give notice.

SEC. 2. *And be it further enacted*, That the leader of every patrol detachment shall give notice to every person appointed, of his detachment, of the time and place of meeting for the said detachment to patrol, and every such person, who after such notice, or after other information of the said time and place of meeting, shall fail to attend or send a substitute in his stead, or shall, after attendance, neglect a faithful performance of patrol duty, shall forfeit and pay the sum of five dollars, one half whereof, when recovered, shall accrue to the said leader, and the other half to the other persons who shall have performed patrol duty in the detachment wherein the default shall have occurred.

Duty of patrol leaders.

SEC. 3. *And be it further enacted*, That it shall be the duty of the leader of every patrol detachment, to forthwith return to the nearest or most convenient justice of the peace, the name of every defaulter, which said justice shall, within ten days thereafter, issue his summons or warrant, requiring such defaulter to appear, or be brought before him, and in case the said defaulter shall not appear, or be brought before him, it shall then be the duty of the said justice, on proof of service of the process, and on proof of service of the notice, required by the preceding section, or on proof of other information of the time and place of meeting to patrol, to give judgment, and issue execution against the said defaulter for the said forfeiture: *Provided*, that in case a sufficient excuse be given to the said justice, within ten days after the default made, the said justice shall not issue process against the said defaulter, nor if such sufficient excuse be given at the hearing, shall the said justice give judgment against the said defaulter for the said forfeiture, but the said defaulter shall nevertheless pay costs.

Penalty for neglect of duty.

SEC. 4. *And be it further enacted*, That the leader of every patrol detachment, shall for neglecting to give the notice herein before required, or for neglecting to prosecute for the forfeiture as herein before directed, or for neglecting any other duty required by this act, or the act to which this is an amendment, forfeit the sum of ten dollars, to be recovered before any justice of the peace, one half to the use of the commanding officer of the militia company, within whose district the said leader resides, the other half to the use of those persons of the patrol detachment, which the said leader was appointed to command, and it is hereby made the duty of the commanding officer, to return to some justice of the peace, the name of every such defaulting leader, and the said justice shall proceed against the said defaulting leader, as herein before directed in the case of other defaulters; and if any commanding officer of any militia company shall knowingly neglect for three months to make such return, or shall neglect or omit any other duty, by this act required, or the act to which this is an amendment, he shall forfeit twenty dollars to the use of any person suing for the same.

SEC. 5. *And be it further enacted*, That any person interested in any of the forfeitures prescribed by this act, or by the act to which this is an amendment, shall be deemed and received as a competent witness in any suit for any of the said forfeitures, any law to the contrary notwithstanding.

Detachments appointed.

SEC. 6. *And be it further enacted*, That if the regular muster of any militia company shall not be held, or if from any other cause, patrol detachments, or a sufficient number of them are not appointed, it shall be the duty of the commanding officer of the company to appoint such detachment or detachments, and inform the leader or leaders thereof, and that patrol detachments, appointed by virtue of this act, or the act to which this is an amendment, shall consist of not more than seven, nor less than four persons, including the leader, at the discretion of the commanding officer of the company: *Provided*, That such commanding officer shall not put more than half of his company on patrol duty without orders from the commanding officer of the regiment or battalion to which he belongs.

SEC. 7. *And be it further enacted*, That the fourth and fifth sections of the act to which this is an amendment, and all other acts, and parts of acts, coming within the purview and meaning of this act, shall be, and the same are hereby repealed.

Sections, &c. repealed.

SEC. 8. *And be it further enacted*, That it shall be the duty of commanding officers of companies to appoint leaders of patrols from the most discreet persons within their bounds, which leaders shall be accountable for the orderly conduct of their detachments: *Provided*, That if he shall forthwith report any disorderly conduct or disobedience of any patrol-man of his detachment to the nearest justice of the peace, he shall be no further accountable.

Leaders to be held accountable.

SEC. 9. *And be it further enacted*, That if any patrol-man shall disobey the orders of his leader when out on duty, or otherwise behave disorderly, he shall be fined by the judgment of a justice of the peace, in a sum not exceeding ten dollars, which when recovered shall accrue to the leader and the other patrolmen of the detachment, in the proportion provided for other fines, and such disobedient or disorderly patrol-man, shall be moreover liable to pay any damages which may happen to any individual in consequence of his disorderly conduct, to be recovered before any court having jurisdiction.

Penalty for disobedience.

CHAPTER VI.

An Act concerning Slaves brought into this Territory, contrary to the Laws of the United States.—*Passed December 8, 1815.*

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That any slave or slaves brought or imported into this territory, contrary to the laws of the United States, in such case made and provided, shall be condemned by any superior court of this territory, within whose jurisdiction the said slave or slaves shall be brought or be seized, upon libel filed in the said court; and shall be sold by the proper officer of the court, to the highest bidder, at public auction, for ready money, after advertising the time and place of such sale, in some newspaper in this territory, at least fifteen days previous thereto.

Prohibition of the importation of slaves into the territory.

When brought. Sale of such slaves.

SEC. 2. *And be it further enacted*, That the residue of the money arising from the sale, after deducting the costs of suit, shall be paid, one half to the collector of the customs within whose district the said slave or slaves shall have been seized, and the other half into the territorial treasury. But in case there shall have been an informer, one half of the amount directed to be paid to the collector of the district shall accrue and belong to said informer.

Disposition of money arising from such sale.

CHAPTER VII.

Extract from an Act to amend an Act, entitled " An Act to regulate Taverns, and Restrain Tippling Houses.—*Passed November* 27, 1816

Free negroes not to be licensed to keep taverns or retail liquors.

SEC. 2. *And be it further enacted*, That hereafter it shall not be lawful for free negroes to be licensed to keep tavern, or retail any vinous or spirituous liquors; any law to the contrary notwithstanding.

CHAPTER VIII.

An Act to amend the Act, entitled " An Act to prevent the Liberation of Slaves, only in cases hereafter named, and for other purposes.—*Passed December* 19, 1815.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the jurisdiction given to the circuit and county courts, by the second section of the act to " Prevent the Liberation of Slaves only in certain cases hereafter named, and for other purposes," passed the twentieth day of July, eighteen hundred and five, shall hereafter be exercised by the superior courts of law and equity alone, and not by the county courts; and that the power vested in said courts to take bonds and recognizances, as expressed in said section, shall and may be exercised by a judge of the territory, out of court, as well as in court.

CHAPTER IX.

CONSTITUTION.

SLAVES.

SEC. 1. The general assembly shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state: *Provided*, That such person or slave be the *bona fide* property of such emigrants: *And provided also*, That laws may be passed to prohibit the introduction into this state of slaves who have committed high crimes in other states or territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to prevent slaves from being brought into this state as merchandise, and also to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

SEC. 2. In the prosecution of slaves for crimes, of a higher grade than petit larceny, the general assembly shall have no power to deprive them of an impartial trial by a petit jury.

SEC. 3. Any person who shall maliciously dismember, or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in cases of insurrection by such slave.

CHAPTER X.

An Act to regulate Patrols, and for other purposes.—*Passed December* 17, 1819.

Who liable to patrol duty.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That every male owner of slaves, and all other persons below the rank of ensign, liable to perform militiary duty, are hereby declared liable to perform patrol duty, as herein after directed, but shall be at liberty to send a substitute to perform said duty in their stead.

Captains required to detail patrol detachments.

SEC. 2. It shall be the duty of every captain of infantry in this state, to cause to be made a complete list of all the male persons within the bounds of his company, liable to perform patrol duty; including in the said list every person liable as aforesaid, whether belonging to the militia company under his command, or to any other company; and in the said list the said captain shall cause to be included every person liable as aforesaid, who shall come to reside within said bounds, within ten days after such person shall reside therein; and it shall be their duty to regulate patrols within their own companies, by making, at every company muster of their respective companies, by rotation, a list of patrol detachments, and appoint to every such detachment a proper officer, or leader: which detachment shall severally consist of not less than three nor more than five men beside their leader, who shall perform the duties of patrols, once in each week, for the term of two months, or until the next company muster, except at the last muster in each year; at which time it shall be the duty of the captain to appoint two patrol detachments, as also designate the time each detachment shall serve: *Provided*, no one shall be compelled to serve out of his regular routine of duty.

Duties of patrol detachments.

SEC. 3. It shall be the duty of each patrol detachment, to visit all negro quarters, all places suspected of entertaining unlawful assemblies of slaves or other disorderly persons unlawfully assembled, and upon finding such disorderly person or persons, to take him, her, or them, if free, before the nearest justice of the peace of such county, or make report thereof to said justice, so that he, she, or they may be dealt with according to law; and if any slave or slaves shall be found so assembled, or strolling without a pass, or some token from his or her owner or overseer, the said patrol may give any such slave any number of lashes, not exceeding fifteen, and if there be reason to suspect any such slave or slaves to be runaway from his or her owner, they shall take such slave or slaves before the nearest justice of the peace for such county, to be dealt with according to law, and be allowed, and paid by the owner for all runaway slaves so taken up, the sum of ten dollars, and shall also be entitled to receive all other fines to which parties may be liable, which they may bring before any jurisdiction having cognizance thereof.

Runaway slaves.

Leader of patrol to give notice of patrol.

SEC. 4. The officer or leader of every patrol detachment, shall give notice to every person thereto belonging, of the time and place of meeting to patrol, and every person who, after such notice, shall fail to attend or send a substitute in his place, or shall, after attendance, neglect a faithful performance of patrol duty, shall be returned by the patrol officer or leader, to the captain in whose bounds he may reside: and should the said defaulter so returned be subject to do militia duty, the captain shall return said defaulter to the next court-martial, who shall be fined at the discretion of the court-martial, in any sum not exceeding ten dollars, one half thereof shall, when recovered, accrue to the said officer or leader, and the other half thereof to the other persons who shall have performed patrol duty in the detachment wherein the default shall have occurred; but should the defaulter so returned to the captain not be subject to do militia duty, the captain shall forthwith return said defaulter to some justice of the peace for said county, who shall issue his warrant within ten days thereafter, requiring such defaulter to appear before him, and in case the said defaulter shall not appear before him, it shall then be the duty of the said justice, on proof of service of the process, and on proof of the service of the notice required by the preceding part of this section, of the time and place of meeting to patrol, to give judgment and issue execution against the said defaulter, for the sum of five dollars with costs, to be distributed as before named in this section: *Provided*, that if a sufficient excuse be given to the said justice or court-martial, if such excuse be given at the hearing, then the said justice or court-martial shall not give judgment, nevertheless the said defaulter shall pay costs.

Defaulter, how punished.

Proviso.

Penalty for not giving notice.

SEC. 5. The officer or leader of every patrol detachment shall, for neglecting to give the notice herein before required, or neglecting to prosecute for the forfeiture, as herein before directed, or for neglecting any other duty required by this act, shall be returned to the captain, by any one of the detachment, wherein the default shall have occurred; and it shall be the duty of the captain to report the said defaulter to the next court-martial, who shall be fined in a sum not exceeding ten dollars, the said forfeiture, when recovered, shall be divided between those persons who shall have performed patrol duty in the detachment wherein the default shall have occurred.

SEC. 6. If the regular muster of any military company shall not be held at the appointed time, it shall be the duty of the commanding officer of the company to appoint such detachment of patrol, as shall be next in routine, and inform the officer or leader thereof, who shall forthwith act accordingly.

Captains to appoint the most discreet persons as leaders of patrols.

SEC. 7. It shall be the duty of the captains of companies to appoint the officers or leaders of patrols, from the most discreet persons within their bounds, which officer or leader shall be accountable for the orderly conduct of the detachment: *Provided*, That if he shall forthwith report any disorderly conduct or disobedience of any patrol-man of his detachment, agreeably to the third section of this act, then such disorderly or disobedient patrol-man shall, exclusive of the foregoing fine, moreover be liable to pay any damages which may happen to any individual in consequence of his disorderly conduct, to be recovered before any tribunal having cognizance thereof.

Patrols may give this act in evidence.

SEC. 8. If any commanding officer, constable, patrol-man, or other person shall be sued, arrested, or impleaded, for any matter or thing, which he shall do or cause to be done, by virtue of, or in pursuance of this act, it shall and may be lawful for every such captain or other officer or person, to plead the general issue, and give this act and the special matter in evidence on the trial, and if a verdict shall pass against the plaintiff or plaintiffs, or if they shall be nonsuited in his or their action or suit, then and in that case, the court where such action shall be pending, shall tax and allow the defendant, his or their double costs, in every such suit or action.

Persons harbouring slaves, how treated.

SEC. 9. *And be it further enacted*, That if any of the patrols as aforesaid, under this act, should receive any information, of any person or persons, harbouring any negro or negroes, or slaves, belonging to any other person or persons whatsoever, shall immediately, on receiving any such information, summon together their patrols, and go immediately in search of said negroes, and if found, to take them forthwith to the nearest justice of the peace: and if no owner comes and claims said slave or slaves, it shall be the duty of said justice to commit such slave or slaves to the common jail of the county.

Punishment for harbouring slaves.

SEC. 10. *And be it further enacted*, That if any person or persons, being convicted of harbouring or concealing any negro or negroes, belonging to any other person or persons whatsoever, or suffering the same to be (with his consent and knowledge) shall upon conviction of such offence, be fined in a sum not exceeding seven hundred dollars, and shall be imprisoned not less than one calendar month, nor exceeding six calendar months, and shall be liable in damages to the party injured, to be recovered by action on the case, before any tribunal having competent jurisdiction.

CHAPTER XI.

An Act to amend the several Acts concerning the Trial of Slaves.—*Passed December* 17, 1819.

Note.—This act gives the county court jurisdiction in the trial of slaves for crimes and misdemeanors, and points out the mode of proceeding; it will be found under Title "Courts Inferior," chap. 7. pp. 185, 186.

CHAPTER XII.

An Act to repeal in part and amend an Act, entitled "An Act to constitute a Court of Oyer and Terminer, for the Trial of Slaves, and for other purposes —*Passed December* 13, 1821.

Note.—This act makes it the duty of the clerks of the county courts to attend as clerks of the courts at the Trial of Slaves, instead of the clerks of the circuit courts; it will be found under Title "Courts Inferior." Chap. 11. pp. 200, 201.

CHAPTER XIII.

A list of Slaves whom the Legislature have authorized the owners to emancipate since the establishment of the Alabama Territory.

February, 1818. Rosetta, the property of Honore Colin, free mulatto in Mobile.

February, 1818. Robin, alias Robert Long, the property of John S. Divin.

February, 1818. Rose, the property of Daniel Reed, a free negro.

November, 1818. Nancy, the property of David Norris.

December, 1819. Martin, the property of Thomas Johnson, of Madison County.

December, 1819. Cesar Kennedy, a free negro of Madison county, was authorized to manumit and set free the following slaves, his property, viz: Hannah his wife, and her seven children, Maria, John, Mary Ann, William, Cesar, Russel, and Thomas.

November 27, 1819. John Bethany was authorized to emancipate the negro Lydia, and the following mulattoes, viz.: Eliza, Elizabeth, William, Daniel, Amelia, Margaret, and Lemuel, a quarteroon.

December, 1820. Lemuel Mead authorized to emancipate the negro slave, called Richmon Richardson.

December, 1820. John N. S. Jones, and Alexander P. Jones, authorized to manumit and set free, the mulatto woman Elizabeth, and the mulatto girls Evelina, and Ann, and also Shandy.

December, 1820. Killis Walter of Lawrence county authorized to emancipate his negro slave Tom.

December, 1820. Daniel Reed, a free negro, authorized to emancipate his children Judah and Eliza.

December, 1821. Leonard Abercrombie of Dallas county authorized to manumit and set free a coloured woman named Fanny, (alias Fanny Martin,) and her ten children, Moreau, Jane, Emily, Morgan, John, Maria, Eliza, Betsey, Fanny, and Lavinia, on condition of their being removed out of the state.

November, 1821. Maria Williams authorized to emancipate Richard Evans: and Lewis Tilman authorized to emancipate his slave Jack.

CHAPTER XIV.

An Act to prevent Free Negroes and Mulattoes from Retailing Spirituous Liquors, and for other purposes.—*Passed December* 26, 1822.

Prohibition, 1st of May. Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the first day of May next, it shall not be lawful for any free negro or mulatto, either directly or indirectly, to retail any kind of spiritous liquors within this state.

Forfeiture.

SEC. 2. *And be it further enacted,* That any free negro or mulatto, who shall directly or indirectly violate the provisions of this act, shall forfeit and pay the sum of ten dollars for every such offence; recoverable before any court having competent jurisdiction of the same, one half to the informer, and the other half to be paid into the county treasury.

Punishment.

SEC. 3. *And be it further enacted,* That any free negro or mulatto, who shall violate the provisions of this act, after having been once convicted and fined, shall, in addition to the fine imposed by this act, receive for every such offence, such corporal punishment on his or her bare back, not exceeding twenty-five stripes, as may be ordered by the court trying the same: *Provided,* That this act shall not affect any free negro, mulatto, or other person, who, by the treaty between the United States and Spain, became citizens of the United States, or the descendants of any such person.

Proviso.

CHAPTER XV.

An Act to carry into Effect the Laws of the United States prohibiting the Slave Trade.—*Passed January* 1, 1823.

Governor to appoint an agent.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the governor of this state be, and he is hereby authorized and required to appoint some suitable person, as the agent of the state, to receive all and every slave or slaves, or persons of colour, who may have been brought into this state in violation of the laws of the United States, prohibiting the slave trade: *Provided,* That the authority of the said agent is not to extend to slaves who have been condemned and sold.

Proviso.

Agent to give bond.

SEC. 2. *And be it further enacted,* That the governor be, and he is hereby required to take such bond or bonds from the said agent or other person, into whose possession the said slaves may be placed, in such amount, and with such conditions as he may deem necessary, to ensure their safe keeping and proper treatment.

Slave, how employed.

SEC. 3. *And be it further enacted,* That the said slaves, when so placed in the possession of the state as aforesaid, shall be employed on such public work or works, as shall be deemed by the governor of most value and utility to the public interest.

May be hired.

SEC. 4. *And be it further enacted,* That such part of the said slaves shall be hired out as will be sufficient to defray the expenditures necessary to the maintenance and support of those employed on the public works as aforesaid.

How disposed of.

SEC. 5. *And be it further enacted,* That in all cases in which a decree of any court having competent authority shall be in favour of any claimant or claimants, the said slaves shall be truly and faithfully, by said agent, delivered to such claimant or claimants; but in case of their condemnation, they shall be sold by such agent for cash to the highest bidder, by giving sixty days notice in a newspaper, printed at Cahawba, Mobile, Tuskaloosa, Huntsville, and Florence.

Three-fourths paid into the treasury.

Sec. 6. *And be it further enacted,* That the money arising from such sale or sales shall be paid into the treasury of this state, except one-fourth thereof, which shall be paid to the informer, if there be one.

Judge to decide on conflicting claims.

Sec. 7. *And be it further enacted,* That no informer shall be entitled to receive any part of the money arising from any such sales, except by virtue of the decree of the judge of the circuit court of the county into which such slave or slaves may have been first brought; and the circuit judges of this state are hereby expressly authorized to try and decide all conflicting claims set up by informers in relation to said slaves.

Agent to demand slaves.

Sec. 8. *And be it further enacted,* That it shall be the duty of the said agent to ask for and demand said slave or slaves of any person or persons, in whose possession they may be found.

CHAPTER XVI.

An Act to authorize Gilbert D. Taylor to emancipate certain Slaves therein named.—*Passed December* 8, 1822.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Gilbert D. Taylor, of the county of Limestone, be, and he is hereby authorized to emancipate the following named slaves, to wit: John Rawlins, Jack Lewis, John Fellows, Thener, a woman, all over the age of twenty-one, on the first day of January next; and Fanny, Susan, Nancy, Tom, and George, under that age, so soon as the said Gilbert D. Taylor shall have executed to the judge of the county court of Limestone county, and his successors in office, a bond, with sufficient security, that said John Rawlins, Jack Lewis, John Fellows, Thener, Fanny, Susan, Nancy, Tom, and George, shall never become chargeable to the state of Alabama, or any county or town within the same: *Provided,* That nothing in this act contained shall be so construed, as to affect the right of the creditors of said Taylor, but that said negroes hereby authorized to be emancipated shall be at all times during their continuance in this state, liable to be taken in execution, and in default of other sufficient property, be sold to satisfy any judgment or decree founded on any contract or claim either in law or equity, now existing against said Taylor: *Provided also,* That the said negroes hereby authorized to be emancipated, shall remove out of this state within ten months, and shall not return to reside within the same at any time thereafter: *Provided also,* That the wife of said Taylor shall upon examination by the judge of the county court, apart from her husband, give her free and voluntary consent to the emancipation of said negroes, which consent shall be entered of record in said court.

CHAPTER XVII.

An Act to manumit certain Slaves therein named.—*Passed December* 12, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Henry Taylor, of Wilcox county, be, and he is hereby authorized and empowered, to manumit and set free from slavery, the following persons of colour, to wit: James, Elsey, and Louisa; and the said James, Elsey, and Louisa, are hereby declared to be freed and liberated from slavery, so soon as the said Henry Taylor shall give to the judge of the county court of Wilcox, bond and good security, in the sum of one thousand dollars, conditioned that none of the above persons set free and liberated, shall become a charge to the public: *Provided,* That nothing contained in this act shall be so construed, as to interfere with the rights of creditors: *Provided also,* That said negroes shall remove out of this state within twelve months after they are manumitted, and shall not again return to reside in the same: *Provided,* That said slaves shall be subject to the same laws, rules, and regulations to which all other slaves are subject, during their continuance in this state.

H. Taylor authorized to emancipate certain slaves.

Proviso.

CHAPTER XVIII.

An Act to authorize Nicholas Pope to emancipate a certain Slave therein named.—*Passed December* 28, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Nicholas Pope, of the city of Mobile, be, and he is hereby authorized to emancipate a certain boy slave, named Willis, so soon as the said Nicholas Pope shall have executed to the judge of the county court of Mobile, and his successors in office, a bond with sufficient security, to be approved by the said judge; conditioned that the said Willis shall never become a charge to the state of Alabama, or any county or town therein: *Provided,* That said slave shall remove out of this state after he arrives at the age of twenty-one years, and shall not return to reside therein.

To execute bond to judge of county court.

CHAPTER XIX.

An Act to manumit a Negro Woman Slave, Margaret, and her Children.—*Passed December* 20, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That a negro woman slave, named Margaret, the property of the estate of Thomas Ragland, deceased, and her children, Tom and Delia, be, and they are hereby declared to be freed and liberated from slavery, so soon as the legal representative or

Slaves freed.

representatives of the said Thomas Ragland shall give bond and sufficient security in the sum of one thousand dollars, to the judge of the county court of Monroe county, conditioned that neither of the aforesaid persons so freed and liberated, shall become a charge to the public: *Provided, however,* That the said negroes shall be subject to the payment of any debts which may now be due from the estate of said Ragland, in the event of his other property being insufficient to satisfy the same.

To leave the state within 12 months.

SEC. 2. *And be it further enacted,* That the said negro slaves shall be required to remove beyond the limits of this state within twelve months after they become liberated and set free, according to the intent and provisions of this act, and shall not return to reside within the same: *Provided nevertheless,* That the several negro slaves by this act authorized to be liberated and set free, shall not be required to remove as aforesaid, beyond the limits of this state, until they respectively have attained to the age of twenty-one years: *Provided, also,* That the aforesaid mother of the said children shall not be obliged to leave this state until the youngest of the said children shall have attained the age of five years.

Proviso.

CHAPTER XX.

An Act authorizing Augustus Baudry to emancipate a certain Slave therein named.—*Passed December* 5, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Augustus Baudry, of the county of Tuskaloosa, be authorized and empowered to emancipate a certain male slave named Gadstith, about thirty years of age.

Conditions of emancipation.

SEC. 2. *And be it further enacted,* That the foregoing authority is granted on the condition only, that the aforesaid Augustus Baudry shall be required to execute his bond with good and sufficient security, made payable to the judge of the said county of Tuskaloosa and his successors in office, in such sum as the said judge shall require; conditioned, that the aforesaid slave Gadstith shall never become chargeable to the state of Alabama, or any county or town thereof, and that the rights and remedies of any creditor or creditors shall in nowise be affected thereby: *Provided, however,* that the said slave Gadstith shall remove beyond the limits of this state within twelve months after his emancipation. and shall not return to reside therein.

Proviso.

NOTARIES PUBLIC.—1803.

CHAPTER I.

An Act concerning Notaries Public.—*Passed February* 10, 1803.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the governor shall appoint and commission a competent number of persons of known good character, integrity, and abilities, as notaries public of this territory; to reside at such place or places within the same, as the governor shall in and by their respective commissions direct: *Provided,* That there shall not be more than two notaries appointed and commissioned to reside in any one county in this territory.

Governor to appoint notaries.

Sec. 2. *And be it further enacted,* That the said notaries, so commissioned as aforesaid, and every of them, shall have the power of administering oaths and affirmations according to law, in all matters belonging or incident to their notarial office: and all and every person who shall be legally convicted of having knowingly and wilfully made or taken a false oath or affirmation before any notary, in any matter within his official duty, shall suffer the pains and penalties of wilful and corrupt perjury.

Notaries to administer oath, &c.

Persons swearing falsely to be guilty of perjury.

Sec. 3. *And be it further enacted,* That the said notaries, and every of them, shall have the power to receive the proof or acknowledgment of all instruments of writing relating to commerce or navigation; such as bills of sale, bottomries, mortgages, and hypothecations of ships, vessels, or boats, charter parties of affreightment, letters of attorney, and such other writings as are commonly proved or acknowledged before notaries within the United States; and also to make declarations and testify the truth thereof under their seal of office, concerning all matters by them done in their respective offices.

Notaries to receive proof of certain instruments,

and declare thereon under seal.

Sec. 4. *And be it further enacted,* That every of them the said notaries, shall keep fair registers of all official acts by them done in virtue of their office; and shall, when thereunto required, give a certified copy of any record in his office unto any person applying for the same, such person paying the legal fees for such certified copy.

Record to be kept of notarial proceedings, copies to be given when applied for.

Sec. 5. *And be it further enacted,* That in case of the death, resignation, disqualification, or removal, of any of the said notaries, his registers and other public papers shall be lodged within thirty days next after such death, resignation, disqualification, or removal, in the office of the clerk of the county court of the particular county where he resided; and the said clerk may bring and maintain an action of trover and detinue for the same: such registers or public papers shall not in any case be liable to

In case of death, &c. notarial registers to be filed in the recorder's office,

and to be recovered by trover by a clerk.

be seized, attached, or taken in execution for debt, or for any demand whatever.

Notary to have a seal.

Sec. 6. *And be it further enacted*, That every notary shall provide a public notarial seal, with which he shall authenticate all his acts, instruments, and attestations: on which seal shall be engraved the arms of this territory, and shall have for legend the name, surname, and office of the notary using the same, and the place of his residence.

Notary to be sworn, and give bond with sureties for the faithful discharge of his office.

Sec. 7. *And be it further enacted*, That every notary on his appointment, and before he enters on the duties of his office, shall take and subscribe an oath or affirmation, that he will well and truly perform the duties of his office; and also, that he will support the constitution of the United States, and the ordinance for this territory; he also shall give bond, himself in a sum not exceeding two thousand dollars, and two sureties in a sum not exceeding one thousand dollars each, conditioned for the faithful performance of the duties of his office; the amount of said bonds to be determined by the governor, which obligation shall be recorded in the office of the clerk of the county court within the county where the notary may reside, and may be sued by any party or parties injured, in like manner, and with like effect as bonds given by sheriffs and coroners, for the faithful execution of their respective offices.

CHAPTER II.

Extract from "An Act to revise and amend the several Acts relating to Justices of the Peace, &c."—*Passed December* 27, 1814.

Sec. 28. When there is no notary public, orwhere he is absent or incapable of acting, any justice of the quorum or of the peace may discharge the duties required of such notary by the act of this territory, for which he shall receive the fees allowed by law for such services.

CHAPTER III.

A Table of Notarial Fees from the Act concerning Fees.—*Passed December*, 1812.

No. 1.	For protest of bills, registering and seal, &c. -	$1 50
2.	Attesting letters of attorney and seal, -	50
3.	Notarial affidavit to an account, or other writing under seal, - - - - -	50
4.	Registering foreign bill protested, with certificates, - - - - - -	75
5.	Registering protest of bill of exchange, or note for non-acceptance, or non-payment, -	50
6.	Each oath, or affirmation, and seal, - -	50
7.	Notarial procuration and seal, - -	1 00
8.	Certificates of sales at auction, and seal, -	75

9.	Taking proof of debts to be sent abroad, proof and acknowledgment of letters of attorney, and seal, - - - - -	$ 75
10.	For protest in insurance cases, and seal, -	1 00*

POOR—1807.

CHAPTER I.

An Act for the Settlement and Relief of the Poor. Originally passed in March, 1803, and re-enacted with amendments, *February* 10, 1807.

Overseers to be appointed.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That it shall be the duty of the justices of the county courts, in their respective counties, at their first courts, which shall be held after the passing of this act; and yearly thereafter, to appoint one or more overseers of the poor in each captain's district, to serve for the term of one whole year, or until another overseer shall be appointed: and any person so appointed, who shall refuse or neglect to serve as overseer of the poor, unless disqualified by age or infirmity, of which the justices shall judge, shall forfeit and pay fifty dollars, to be recovered with costs, by action of debt in any court having competent jurisdiction: for the use of the county: *Provided,* That no person holding any office or employment under the government shall be compelled to serve as overseer of the poor, so long as he holds the same. In case of the refusal or inability of any person to serve as overseer of the poor, it shall be lawful for any three justices, during the vacation of the county court, to appoint a new overseer of the poor for the remainder of the year, in room of the said person unable or refusing to serve; which said new overseer shall be subject to the same duties and penalties which were obligatory upon the person appointed overseer by the county court: and every overseer so nominated and appointed, shall, immediately after his nomination, take an oath or affirmation, respectively, according to law, before any judge or justice, that he will discharge the duties of overseer of the poor, truly, faithfully, and impartially, to the best of his knowledge and ability.

Their duty.

SEC. 2. *And be it further enacted,* That it shall be the duty of the overseers of the poor, each in his respective district, to provide for the indigent, lame, blind, and others not able to maintain themselves; and may also provide houses, nurses, and physicians, in such cases as they shall think necessary; the expenses of which shall be provided for in the annual county levy: and it shall be lawful for the overseers of the poor to contract with any person or persons for keeping, maintaining, and employing any or all such poor persons, and take the benefit of their work, labour, or service, towards their maintenance and support. If any poor person shall refuse to be lodged, kept, maintained, and employed in such manner as the overseers shall direct, he or she shall be struck off from the overseers' list, and shall not be entitled to receive relief from the overseers during such refusal. The said overseers shall make fair entries in a book, of the names of all the poor within their respective districts, with the time when each of them became chargeable, together with the amount of all charges, costs, and expenses incurred under the direction of the said overseers: which books and accounts they shall be obliged to present twice in every year, for the inspection of the justices assembled in their county courts. And if the said justices shall approve the accounts of any such overseers, they shall issue a certificate to that effect, directing the county treasurer to pay the amount thereof to such person or persons to whom the to the same may be lawfully due.

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* The Act passed in eighteen hundred and three contained twenty-two items of notarial fees.

The section was omitted in the digest of eighteen hundred and seven; but was introduced into a general law, prepared for the digest. The legislature, however, passed a new fee law, and omitted to notice the fees of notaries. This defect was very imperfectly supplied in eighteen hundred and twelve, by twelve items, (many of them relating to seafaring business,) being omitted.

Poor persons refused relief by them, how to proceed.

SEC. 3. *And be it further enacted*, That if any poor person shall suppose that he or she is entitled to the benefit of the laws for the relief of the poor, which may have been refused by the overseer, such person may apply to the county court, or during the recess, to any two justices, who are authorized, if they shall think proper, to direct the overseer to receive him or her upon the list of the poor, which overseer is bound to yield obedience to the directions of the said court or justices.

To prevent the poor leaving their proper county.

SEC. 4. *And be it further enacted*, That the overseers shall take measures to prevent the poor from strolling from one district into another, and may make complaint before any justice that any poor person is come into their county, and is likely to become chargeable thereto; whereupon it shall be lawful for such justice, by warrant under his hand, to cause such poor person to be removed to the county where he or she was last settled: *Provided*, That such poor person hath not been resident for six months last past in the county from which it is proposed to remove him or her. But if such poor person be sick or disabled, and cannot be removed without danger of life, the overseer shall provide for his or her maintenance and cure, at the charge of his or her county; and after recovery, shall cause him or her to be removed; and the county wherein he or she was legally settled, shall repay all charges occasioned by the sickness, maintenance, and cure of such poor person, and for removing him or her; and also all charges or expenses if such person shall die before removal: and it shall be the duty of the overseer of the district to which the person belongs, to receive and provide for the person or persons so removed; and in case of refusal, the said person or persons may apply to any two justices of the county for relief, as herein before directed. The overseer who shall have made the disbursement, being furnished with a certificate of the said expenditure by the justices of the county court of his proper county, shall apply to the justices of the county court to which the said poor person or persons shall belong: which said justices last mentioned, are hereby directed to draw an order on the treasurer of their proper county for the reimbursement of the said expenses.

Dispute respecting residence.

SEC. 5. *And be it further enacted*, That where any dispute shall arise respecting the residence of any poor person, the court of any county adjacent, and not interested, is authorized to take cognizance thereof, and determine the same.

Poor orphans and children.

SEC. 6. *And be it further enacted*, That the overseers of the poor shall make returns to the county courts, twice a year, of the poor orphans in their districts, and of such children within the same, whose parents they shall judge incapable of supporting them, and bringing them up in honest ways. The said courts are hereby authorized to direct the said overseers, or either of them, to bind out such poor orphans and children apprentices to such person or persons whom the court shall appoint, until the age of eighteen years,* if a male; or sixteen years, if a female. The person to whom such apprentice shall be bound, shall engage by a covenant, to be entered in the indenture, to provide the apprentice with a sufficiency of good and wholesome provisions, necessary clothing, washing, and lodging; to teach the said apprentice the business or occupation which he pursues for a livelihood; and also to read, write, and cipher, as far as the rule of three; and at the expiration of said apprenticeship, to furnish the said apprentice with one complete new suit of clothing, and two shirts; if a female, one complete new suit of clothes, and two shifts.

It shall be lawful for the said court, upon the complaint of the overseers of the poor, or of any apprentice, by themselves or friends, against their masters or mistresses, to hear and determine; and if it shall appear to the satisfaction of the court, that such complaint be well founded, and of sufficient magnitude to make a removal necessary, the court shall have power to remove such apprentice, and bind him or her to such other person as they shall think proper.

Poor of corporate towns.

SEC. 7. *And be it further enacted*, That any corporate town which may now or hereafter exist within the said territory, is hereby empowered and required to provide for and maintain the poor within the limits of their said town, separately and distinctly from the poor of the county; and any two magistrates of any corporation court, are hereby empowered, by a warrant under their hands, to cause to be removed any poor person to the place of his or her legal residence, who hath not been resident within the limits of such town for six months last past before such removal; and in like manner, the overseers of the poor within the county may apply to any justice, who is hereby authorized and required, by warrant under his hand, to cause to be removed into any corporate town, any poor person, who shall have left his usual residence in such town, and gone into the county; and the corporation of the said town are hereby empowered, by a poll-tax, or by a tax on property, to levy and assess annually, upon their respective towns, all charges incurred for the support and maintenance of their poor.

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* The time extended in 1809 to twenty-one.

Who to maintain their poor relations.

SEC. 8. *And be it further enacted,* That the father and grandfather, the mother and grandmother, and the descendants of any poor, old, blind, lame, and impotent person, or other person not able to work, being of sufficient ability, shall at their own charge, relieve and maintain every such poor person as the justices shall direct at their next county court, in their respective counties, or the corporation courts in their respective towns, on pain of forfeiting eight dollars for each month they shall fail therein.

Penalty for bringing any infant, lunatic, &c. into the territory.

SEC. 9. *And be it further enacted,* That if any person commanding a ship, vessel, or boat, shall import into this territory, or bring to the shores thereof, any infant, lunatic, maimed, aged, infirm person, or vagrant, who may be adjudged to become likely to be chargeable to the territory, it shall be lawful for any justice of the county court, or for any magistrate of a corporation court, to compel such person commanding such vessel, to give sufficient security to indemnify the inhabitants of this territory from any charge that may come, or be brought upon them by such infant, lunatic, maimed, aged, infirm, or vagrant person, coming into or living within this territory, or otherwise to transport such person beyond the limits of this territory.

CHAPTER II.

An Act to amend an Act, entitled " An Act for the Settlement and Relief of the Poor."—*Passed December* 18, 1809.

Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, That so much of the sixth section of the said act, as forbids the binding of male orphan children apprentices, for a longer time than till they are of the age of eighteen years, be, and the same is hereby repealed; and that hereafter it shall be the duty of the overseers of the poor, by order of the court, to bind out all male orphan children, until they arrive at the age of twenty-one years, according to the directions of said act.

CHAPTER III.

Extract from an Act, to provide for the more effectual Administration of Justice.—*Passed February* 10, 1807.

Family of criminal.

SEC. 14. *And be it further enacted,* That whenever, on any criminal prosecution, it shall appear to the satisfaction of the court, that there can be no reasonable expectation that the family of the prisoner will be brought up in honest courses, it shall be the duty of such court to certify the same to the overseers of the poor for the district in which such family may reside: *Provided* the same be within the limits of the jurisdiction of such court, and the said overseers shall thereupon bind out the children of such person to honest, respectable, and virtuous citizens, for the same periods of time, and under the same conditions, for their instruction and maintenance, as in other cases of orphans and poor children, and return the indentures to the next county court, and likewise certify to the said superior court their doings therein.

CHAPTER IV.

An Act to assist poor Persons in their Suits, and to enable Infants to sue by their next Friends.—*Passed February* 10, 1807.

Whereas it is intended that impartial justice should be had and administered to all the citizens of this territory, as well to the poor as to the rich: *And whereas* poor citizens are not of ability or power to sue according to the laws of this land, for redress of injuries and wrongs to them daily done, as well concerning their persons and inheritance as other causes: For remedy thereof, in behalf of the poor persons of this land, not able to sue for their relief after the course of the law,

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That every poor person who shall have cause of action against any person within this territory, shall have by the discretion of the court, before whom he would sue, writ or writs original, and writs of subpœna, according to the nature of his cause, nothing paying for the same: and that the said court shall direct their clerk to issue the necessary process: shall assign to him counsel learned in the laws, and appoint all other officers requisite and necessary to be had for the speed of the said suit, who shall do their duties without any reward for their counsels, help, and business in the same.

SEC. 2. *And be it further enacted*, That in every case, where persons who are within age may sue, their next friends shall be admitted to sue for them.

CHAPTER V.

An Act to set apart a separate Fund, for the Support of the Poor in each County —*Passed January* 1, 1823.

Judge to set apart the tax.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That hereafter, the judge of the county court, together with the commissioners of roads and revenue, in each county in this state, shall annually set apart such part of the county tax as they shall deem necessary, for the purpose of creating a fund for the support of paupers within such county; which fund shall be kept

How appropriated. Overseers to account. Forfeiture.

separate by the county treasurer: and no money shall be drawn or paid out of said fund, except by order of said judge, for the support of the poor within the county; and in that case, it shall be paid to an overseer of the poor, to be by him applied to the purpose for which it is intended: and all overseers aforesaid are hereby required, at the end of the term for which they are appointed, to render an account to the said judge and commissioners, the manner in which he or they have disposed of the sum or sums of money by them received out of the poor fund the preceding year; and in case any overseer shall neglect or refuse to render such account to the judge and commissioners as hereby required, he shall forfeit and pay the sum of dollars for every such neglect or refusal, to be sued for by the county treasurer, for the use of the poor of each county.

PRISONS AND PRISONERS.—1807.

CHAPTER I.

An Act to direct the Building and Establishing a Court-House, Jail, Pillory, Whipping-Posts, and Stocks, in every County.*—*Passed February* 10, 1807.

Court-house, jail, &c. to be erected in each county.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That there shall be erected and established in every county, in which public buildings are not already provided, a good and convenient court-house for the legal adjudication of causes; and a strong and sufficient jail or prison, for the reception and confinement of debtors and criminals; well secured by timber, iron grates, bolts, and locks; and also a pillory, whipping-posts; and so many stocks as may be convenient for the punishment of offenders. And every jail so to be erected, shall consist of three apartments at least, one of which shall be appropriated to the reception of debtors.

Under the direction of the justices thereof.

SEC. 2. *And be it further enacted,* That every court-house and jail to be erected as aforesaid, shall be formed of such materials, and to such dimensions, and on such plans as shall be directed by the justices of the county court, or a majority of them, in each county; who are hereby authorized to plan and project the same; and to accept as a gift, or to purchase for the use of the county, so much ground in the towns where the courts may be ordered to sit, as they may judge convenient and necessary whereon to build all or any of the structures aforesaid. Which purchase money shall be defrayed by the proper county, and laid in the county estimates.

Who to appoint commissioners to superintend, &c.

SEC. 3. *And be it further enacted,* That the said justices, or a majority of them in every county, shall appoint two commissioners, of industry and knowledge, sufficient to plan and carry into effect, by drawing the draught, superintending the foundation, and erecting and completing of every court-house, jail, pillory, whipping-post, and stocks respectively. And for the faithful discharge of their duty in this behalf, the said commissioners shall enter into bonds, in the sum of five hundred dollars, with sufficient sureties, to the justices of the county court, in trust for the county, well and truly to account with the said justices, as often as they may be thereunto required by them, for the disposition of all money, or other property by them received from time to time, from the said justices or treasurer, or any other person; or by any means whatever, for the purpose of aiding or assisting in building the said court-house, jail, and other structures, in the county to which the commissioners may severally belong. And on default in the commissioners, for want of attention or competent knowledge to carry on the work with propriety, the said justices shall have power to discharge one or both of them, and place others in their stead; taking the same surety from them.

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* This Act was first adopted by the governor and judges in 1799, but re-enacted by the general assembly with modifications in February, 1807.

SEC. 4. *And be it further enacted*, That every county, now or hereafter to be erected and laid off within the territory, shall defray all expenses that may attend the building and keeping in good repair, within itself, the court-house, jail, pillory, whipping-posts, and stocks hereby ordered; and to this purpose, for the greater forwarding of the business, it shall be lawful for the justices aforesaid, and they are hereby authorized, to draw out of the hands of the treasurer of the county, any sums of money which he may have received belonging to the county, not otherwise appropriated: and the said justices are hereby directed to apply the same wholly to the purposes of building a jail and court-house, pillory, whipping-posts, and stocks. But in every county, a jail shall be first erected; and the treasurer and justices are to govern themselves accordingly.

CHAPTER II.

An Act for the well regulating of Jails.—*Passed February* 10, 1807.

Mittimuses, writs, &c. to be filed.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That all warrants, mittimuses, writs, process, or precepts of any kind, or the attested copies thereof, by which any prisoner may be committed to, or enlarged from any jail in this territory, shall be regularly filed in their order of time, and safely kept by the sheriff, or keeper of the jail, under his direction: and upon the death, removal, or resignation of any sheriff, all said warrants, mittimuses, writs, process, and precepts, or copies thereof, filed and kept as aforesaid, shall be delivered over to his successor in office, on demand by him made, under the penalty of three hundred dollars, to be recovered of the sheriff so resigned or removed, or his executors or administrators, in case of his death, one half to the use of the person suing for the same, and the other half to the use of the proper county.

Duty of justices.

SEC. 2. *And be it further enacted*, That it shall be the duty of the justices of the county court, at the beginning of every stated court, to inquire into the state of the prisons in their respective counties, with regard to the sufficiency of such prisons; the condition and accommodation of the prisoners; and they shall from time to time take such legal measures as may best tend to secure the prisoners from escape, sickness, and infection; and to have the jails cleansed from filth and vermin; and the sheriff shall keep separate rooms for the sexes, except where they are lawfully married, and be responsible that his jailer at all times provide proper meat and drink for all criminals committed to the jail of the county, if such prisoners have no other convenient way of supplying themselves with provisions, which shall always pass to them through the hands of the keeper.

Maintenance of prisoners.

Every person committed to prison in a civil case, or for a criminal offence, may furnish his or her own support and maintenance; and the sheriff or jailer shall admit any person who will administer to the wants of such prisoner, to furnish him or her with necessary support and maintenance, in such manner, however, as not to aid any escape, or endanger the security of the prison.

Any person imprisoned in a civil or *qui tam.* action, shall furnish his, or her own sustenance, or pay the jailer fees for the same, until lawfully discharged: and when any prisoner shall be committed to jail in a civil action, as aforesaid, and shall provide for his or her own support, in any way wherein the sheriff or jailer shall have no concern, it shall be the duty of the jailer or prison keeper, to admit to the wicket grate, or small window of the prison, in which such prisoner shall be confined, any persons who may come to administer to the wants of such prisoner, by furnishing him or her with meat or drink; which shall be conveyed through such small window or grate, that the security of the prison be not too frequently exposed by opening the doors thereof.

SEC. 3. *And be it further enacted*, That every person confined for a criminal offence, who may be unable to support him or herself in prison, shall be supplied by the sheriff or jailer under his direction, with daily sustenance; and in case of conviction and inability to discharge the fees for sustenance; or in case of acquittal, and the fees be not taxed on the prosecutor, the same shall be discharged by the territory; and the auditor of public accounts shall draw a warrant in favour of said sheriff or jailer therefor, on the certificate of the court having cognizance of the offence or supposed offence for which such prisoner was confined, that the said sheriff or jailer is entitled thereto; and no fees, expenses, or perquisites whatever, except what are or may be set down and allowed by law, shall be taken or received of a prisoner, or charged against the territory.

SEC. 4. *And be it further enacted*, That no sheriff, jailer, or person having the care or keeping of any jail, shall sell or dispose of, to any person or persons under arrest or in prison, any wine, rum, brandy, whiskey, or other strong or intoxicating liquor, under the penalty of twenty dollars for each offence, to be recovered before any magistrate of the proper county: one half to the person suing for the same, and the other half to the use of the county.

Prison bounds.

SEC. 5. *And be it further enacted*, That a jail-yard or limits to any prison, may be laid out and surveyed, adjoining and appertaining to said prison, not exceeding ten acres of ground; which said limits or prison bounds shall be fixed and ascertained by the county court in each county, and entered on record in such court.*

SEC. 6. *And be it further enacted*, That any prisoner imprisoned in a civil action for debt or damages, on original, *mesne*, or final process, shall have the liberty or limits of such jail-yard, on entering into bond and security as herein after mentioned.

SEC. 7. *And be it further enacted*, That any prisoner imprisoned as mentioned in the last preceding section, may enter into a bond, with two sufficient securities, to the plaintiff, in double the sum of the debt or damages for which he is imprisoned; which said bond the sheriff or jailer shall take, with a condition in the form following, to wit: "The condition of the above obligation is such, that if the above bound A. B., a prisoner in the jail of   county, at the suit of C. D., do and shall from the date hereof continue a true prisoner in the custody, guard, and safe-keeping of the keeper of said prison, or of his steward, deputy, or other officer, or of some of them within the limits of said prison as by law established, until he shall be thence discharged by due course of law, without committing any escape in the mean time, then this obligation shall be void, else to remain in full force and virtue." And the sheriff shall be authorized to take said bond on the approbation thereof of any two justices of the county court, or any of the territorial judges; and on condition broken of the said bond, the same may be put in suit, and the debt or damages for which such prisoner was imprisoned, together with ten per cent. interest thereon from the time of commitment, recovered: and the court shall chancer the said bond accordingly.

CHAPTER III.

An Act directing the manner of employing proper Guards for the Safe-keeping of Criminals, in the several Counties of this Territory, and for other purposes.—*Passed February* 6, 1807.

Sheriff may apply for a guard.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That when any person or persons accused of treason, felony, or other crime or misdemeanor, shall be committed to the jail of any county in this territory, and the sheriff shall have cause to suspect such person or persons will attempt to escape, such sheriff is hereby empowered and required to apply to any justice of the quorum of the county where such person or persons may be confined, who shall, on such application, issue his warrant directed to the said sheriff, for a sufficient guard for securing such prisoner or prisoners, so long as he, she, or they continue in jail; to be paid by the public, after the rate of fifty cents for each man per day.

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* This Section has been somewhat modified by a subsequent Act passed in February, 1807. See title 16, chapter 1.

Former guards.

SEC. 2. *And be it further enacted*, That all guards heretofore employed by the sheriffs of the respective counties in this territory, for the safe-keeping of prisoners charged with criminal offences, shall present their respective accounts to the legislature of this territory; and if upon examination such accounts shall appear to be reasonable, the same shall be allowed and paid by the public, out of the territorial treasury.

SEC. 3. *And be it further enacted*, That this act shall commence and be in force, from and after the passage thereof.

CHAPTER IV.

An Act prescribing the Mode of paying the Expenses incurred for the Safekeeping of Persons committed to the Jail of any County within the Territory, charged with any Crime cognizable before any Court within the same.—*Passed December* 14, 1812.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That from and after the passage of this act, all expenses which may be incurred for guards employed pursuant to the second section of "An Act directing the Manner of employing proper Guards for the Safe-keeping of Criminals, in the several Counties of this Territory, and for other purposes," and all and every other legal expense which shall accrue from the want of a good and sufficient jail, shall be paid out of the treasury of the proper county, upon the certificate of the clerk of the superior court of such county, that an allowance thereof hath been made by such court.

SEC. 2. *And be it further enacted*, That so much of the before recited act, and all other acts that come within the purview of this act, be, and the same are hereby repealed.

CHAPTER V.

An Act concerning Prisoners.—*Passed December* 23, 1815.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That hereafter it shall be lawful for any judge, justice of the quorum, or justice of the peace, when any person or persons shall be brought before him charged with any criminal offence wherein bail is not admissible, or where such prisoner or prisoners shall neglect or refuse to give security for his, her, or their appearance, to commit the said prisoner or prisoners to the nearest jail of some adjacent county, provided there is not a sufficient jail in the county in which the offence was committed, there to be kept until the court shall sit in the proper county for the trial of such prisoner or prisoners: and it shall be the duty of the jailer to receive any prisoner or prisoners sent from any county in which there is not a sufficient jail for safe-keeping, upon the mittimus of any justice of the quorum or peace, of the county from which such prisoner or prisoners are sent.

Prisoners removed from one county to another for safe keeping.

SEC. 2. *And be it further enacted,* That whenever it may be deemed expedient to call out a guard for the guarding of any prisoner or prisoners, such guard shall have and receive the sum of one dollar each, for each and every day they may serve, to be allowed by the county court upon the sheriff's certificate, to be paid out of the county treasury where the offence was committed.

Guard may be called out.

CHAPTER VI.

Extract from an Act for the appointment of Justices of the Peace and the establishment of County Courts.—*Passed February* 10, 1807.

SEC. 22. *And be it further enacted,* That the justices of every county court shall be, and they are hereby required, and empowered, to mark and lay out the bounds and rules of their respective prisons, not exceeding ten acres, which marks and bounds shall be recorded, and renewed, or altered, from time to time as occasion shall require; and every prisoner not committed for treason or other felony, giving good security, (at the discretion of the court, or three justices thereof, out of the court,) to keep within the said rules and bounds, shall have liberty to walk therein, out of the prison, for the preservation of his own or their health, and keeping continually within the said bounds, shall be adjudged and admitted in law a prisoner.

NOTE.—An Act respecting prison bounds bonds, will be found under Title "Executions."

CHAPTER VII.

Extract from an Act to regulate Judicial Proceedings, &c.—*Passed December* 18, 1811.

SEC. 22. *And be it further enacted,* That whenever any person may be committed to the jail of any county within this territory, in any civil suit, whether upon original, mesne, or final process, the jailer of such county shall be entitled to demand and receive of the plaintiff or plaintiffs, weekly, all fees that may become due to him, as well as for finding sustenance for such prisoner, and in case of failure on the part of the plaintiff or plaintiffs to pay the same; such jailer shall be authorized to discharge such prisoner out of jail: *Provided,* The jailer shall have given to such plaintiff or plaintiffs his or their

Where parties do not pay jail fees as directed herein, jailers, by giving legal notice thereof, may discharge debtors.

agent, or attorney, ten days previous notice thereof: *Provided also,* That such discharge shall not go to exonerate any defendant, so discharged out of custody, from the debt, for which he had been in confinement, but the same shall be, as if the defendant had never been committed to jail.

CHAPTER VIII.

An Act to amend an Act, entitled "An Act for the Appointment of Justices of the Peace, and the Establishment of County Courts."—*Passed December* 19, 1815.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the twenty-second section of the act, entitled "An Act for the Appointment of Justices of the Peace, and the Establishment of County Courts," shall not extend to any persons committed to jail by sentence of a court, judge, or justice, as a punishment for an offence committed, to have the liberty of the prison bounds; any thing in the act to which this is an amendment to the contrary notwithstanding.

CHAPTER IX.

Extract from "An Act making Appropriations," &c.—*Passed December* 27, 1815.

County courts to make allowance for repairs to court-houses, jails, and to persons summoned to guard prisoners.

SEC. 3. *And be it further enacted,* That hereafter the justices of the county courts be, and they are hereby authorized to make all necessary allowances for repairs done to the court-houses and jails of their respective counties, and the claims of persons summoned to guard criminals, on the sheriff's certificate, which shall be paid out of the county treasuries respectively: *Provided* the sum so allowed by the county court shall not exceed one hundred dollars in any one year.

CHAPTER X.

An Act for the more effectual Preservation of Personal Liberty.—*Passed February* 10, 1807.

Proceedings in vacation to obtain enlargement.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That if any person shall be committed or detained in vacation time, and out of term, for any criminal or supposed criminal matter, unless for treason, or felony punishable with death, the species whereof is plainly and fully set forth in the warrant of commitment; it shall be lawful for such person, or for any one in his behalf, to complain to one of the territorial judges, who may be or reside nearest to the place of his confinement, and to request by a written petition, attested and subscribed by one or more witnesses, that such prisoner may be brought before such judge for the purpose of his examining into the cause of the commitment or detention of such prisoner: and it shall thereupon be the duty of such judge, upon a view of a copy of the warrant of commitment or detainer, or otherwise, upon oath that such copy was denied to be given by the person in whose custody the prisoner is detained, to issue the writ of liberty, (commonly called a writ of *habeas corpus*,) requiring the production of the prisoner, together with the cause of his detention, directed to the person in whose custody the prisoner is detained, and returnable immediately before the said judge at his place of residence, or at such other place as he shall appoint.

Duty of the sheriff, jailer, &c.

SEC. 2. *And be it further enacted*, That whenever the said writ shall, by any person, be served upon the officer, sheriff, jailer, keeper, or other person whatsoever, to whom the same shall be directed, by being brought to him, or by being left with any of his under officers or deputies, at the jail or place where the prisoner is detained, he, or one of his under officers or deputies shall, within three days after the service thereof as aforesaid, or at such time as may be expressly directed in the said writ, make return of such writ, and bring or cause to be brought, the body of the prisoner unto the judge before whom the said writ is made returnable, or in case of his absence, unto any other of the territorial judges, and shall then likewise, especially and fully certify, the true cause or causes of the commitment and detainer of the said prisoner, and when he was committed. But if the place of the commitment of such prisoner be beyond the distance of twenty miles from the place to which such writ shall be made returnable, and not above one hundred miles; then such writ shall be executed within ten days, and if above the distance of one hundred miles, then within twenty days: *Provided always*, That such officer or other person shall not be obliged to execute such writ until such prisoner or other person in his behalf shall pay or tender the charges of bringing the said prisoner before such judge, at the rate of twelve and a half cents per mile, and until such prisoner shall give his bond to pay the same for carrying him back, if he should be remanded, and that he will not make any escape by the way.

Clerk to draw up a petition.

SEC. 3. *And be it further enacted*, That when any prisoner as aforesaid, or other person in his behalf, shall personally, or by writing, apply to the clerk of the superior court of the county or district in which such prisoner may be confined, and shall pay or tender to him fifty cents for so doing, such clerk shall without delay draw up a petition for and in the name of such prisoner or other person, requesting that he may be brought before the judge to whom the same is addressed, for the purposes herein before expressed, and which shall be subscribed and attested as aforesaid.

Duty of the judge.

SEC. 4. *And be it further enacted*, That the judge before whom any prisoner shall be so brought, shall within two days discharge the prisoner from imprisonment, taking his or her recognizance, with one or more surety or sureties, in any sum according to his discretion, having regard to the circumstances of the prisoner and the nature of the offence, for his or her appearance at the next court where the offence may be properly cognizable, and then shall certify the said writ, with the return thereof, and the said recognizances into the court where such appearance is to be made, unless it shall appear to the said judge, that the party so committed, is detained upon legal process, order or warrant, for such matter or offences, for which by the law the prisoner is not bailable: and that the said judge may according to the true intent and meaning of this act, be enabled, by investigating the truth of the circumstances of the case, to determine whether according to law the said prisoner ought to be bailed, remanded, or discharged; the return may, before or after it is filed, be amended by leave of the said judge, and all suggestions made against it, that thereby material facts may be ascertained.

Proceedings in term time.

SEC. 5. *And be it further enacted*, That in term time it shall and may be lawful for any prisoner as aforesaid, in manner aforesaid to move and obtain, his or her *writ of liberty* as aforesaid, out of the supreme court, or out of the circuit or superior court of the county or district in which he or she may be imprisoned; whereupon proceedings shall be had as aforesaid: and if any such person shall have wilfully neglected by the space of two terms of such court, after his imprisonment to pray for such writ: it shall not be granted in vacation in pursuance of this act.

When a prisoner may be discharged if not tried.

SEC. 6. *And be it further enacted*, That if any person shall be committed for treason or felony, and shall not be indicted and tried, at or before the next stated term of the court where the offence is properly cognizable, it shall be lawful for the said court, upon the last day of the term, to set at liberty such prisoner upon bail, unless it appear to them, upon oath or affirmation, that the witnesses for the territory, mentioning their names, could not be produced; and if such prisoner shall not be indicted and tried the second stated term after his or her commitment, unless the delay happen on the application, or with the assent of the defendant, he or she shall be discharged from imprisonment.

Exceptions.

SEC. 7. *And be it further enacted*, That nothing in this act shall extend to discharge out of prison any person guilty, or charged with any offence committed in any other part of the United States, and who, agreeably to the laws of congress, ought to be delivered up to the executive power of such state, nor any person charged with debt or other action, or with process in any civil cause, or suffering imprisonment under lawful judgment founded on a conviction of some criminal offence.

Restrictions.

SEC. 8. And that no person may avoid his trial by obtaining a *writ of liberty* from some judge residing at a distance from the court where he ought to be tried: *Be it further enacted*, That no person shall be removed out of the county, upon any writ granted in pursuance of this act, within fifteen days next preceding the term of the court where the offence with which he stands charged is properly cognizable, but upon such writ shall be brought before the judge or judges thereof, who shall thereupon do what to justice shall appertain, and after such court, the person detained may have his *writ of liberty*, according to this act.

Penalty on a judge, sheriff, jailer, &c. for disobedience of this act.

Sec. 9. *And be it further enacted*, That if any judge, being complained to as aforesaid, shall (upon view of the copy of the warrant of commitment or detainer, or upon oath or affirmation that such copy was refused) refuse or neglect to award any *writ of liberty* by this act required to be granted; or if any officer, sheriff, jailer, keeper, or other person to whom any such writ shall be directed as aforesaid, or any of his under officers or deputies, shall refuse or neglect to make the returns aforesaid, or to bring the body of the prisoner, according to the command of the said writ, within the respective times aforesaid; or if upon demand by the prisoner or some person in his or her behalf, shall refuse to deliver, or within six hours after demand, shall not deliver to the prisoner or person so demanding, a true copy or copies of the warrant or warrants of commitment and detainer of such prisoner: such judge, officer, sheriff, jailer, keeper, under officer, deputy or other person so offending, shall forfeit to the prisoner or party grieved the sum of five hundred dollars in the case of the judge, and the sum of three hundred dollars in the case of a sheriff or other person, to be recovered by the said prisoner or party grieved, his or her executors or administrators, against such offender, by action of debt, suit, bill, plaint, or information in any court of record.

Penalty for recommitting a person set at large.

Sec. 10. *And be it further enacted*, That no person who shall be delivered or set at large upon any such writ, shall thereafter at any time, be again committed or imprisoned for the same offence by any person or persons whatsoever, other than by the legal order and process of such court wherein he or she shall be bound by recognizance to appear; or other court having jurisdiction of the cause; and if any other person or persons shall knowingly, contrary to this act, re-commit or imprison, or knowingly procure or cause to be re-committed or imprisoned for the same offence or supposed offence, any person delivered or set at large as aforesaid, or be knowingly aiding or assisting therein; then he or they shall forfeit to the prisoner or party grieved, any pretence of variation in the warrant or warrants of commitment notwithstanding, the sum of five hnndred dollars, to be recovered by the prisoner or party grieved in manner aforesaid.

Prisoner not to be removed but by some legal writ.

Sec. 11. *And be it further enacted*, That no person committed to any prison or in custody for any criminal or supposed criminal matter, shall be removed from the said prison or custody, into any other prison, or into the custody of any other person, unless it be by the writ of liberty, or some other legal writ, or where the prisoner is delivered to the constable or other inferior officer to be carried to some common jail, or where any person is sent by any judge or justice, having proper authority, to some common work-house, or house of correction, or where the prisoner is removed from one place to another within the same county, in order to his or her trial or discharge in due course of law, or in case of sudden fire, or infection, or other necessity: and if any person or persons shall after such commitment as aforesaid, make out, sign, countersign and issue, any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or party grieved, two hundred dollars to be recovered by the prisoner or party grieved in manner aforesaid.

Mode of relief the same on whatever pretence a person may be confined.

SEC. 12. *And be it further enacted*, That all the provisions herein before made for the awarding and granting of writs of liberty, and proceeding thereon, in case of commitment or detainer for any criminal or supposed criminal matter, shall in like manner extend to all cases where any person, shall be confined or restrained of his or her liberty under any colour or pretence whatsoever: and upon oath or affirmation made by such person, or by any other in his or her behalf, of any actual confinement or restraint, and that such confinement or restraint, to the best of the knowledge and belief of the person so applying, is not by virtue of any commitment or detainer for any criminal or supposed criminal matter, a writ of liberty directed to the person or persons so confining or restraining the party as aforesaid, shall be awarded and granted in the same manner, and under the same penalties, to be recovered from the same persons, as is herein before directed: and the court or judge before whom the party so confined or restrained shall be brought, shall after the return made proceed in the same manner as is herein before prescribed, to examine into the facts relating to the case, and into the cause of such confinement or restraint, and thereupon either bail, or remand or discharge the party so brought, as to justice shall appertain.

Penalty for disobedience.

SEC. 13. *And be it further enacted*, That whensoever any writ of liberty shall be served upon the person or persons confining or restraining the party in the manner herein last mentioned, by being brought to such person or persons, or by being left at the place where the party shall be so confined or restrained; the person or persons so confining or restraining such party, shall make return of such writ, and bring or cause to be brought the body of such party, according to the command thereof, within the respective times limited, and under the provisions herein before prescribed, and every such person refusing or neglecting to make return of such writ, or to bring or cause to be brought the body of the party, according to the command thereof, within the times respectively limited, and under the provisions herein before prescribed, shall be guilty of a contempt of the court, under the authority of which or of the judge thereof, the said writ shall have issued, and shall also forfeit for the first offence, to the party grieved, two hundred dollars, and for the second offence four hundred dollars, to be recovered by him or her, or his or her executors or administrators, against the offender, in the manner aforesaid.

Limitation of actions under this act.

SEC. 14. *And be it further enacted*, That no person shall be sued, impleaded, molested, or troubled, for any offence against this act, unless such person be sued or impleaded for the same within two years after the time wherein the said offence shall have been committed, in case the party grieved shall not be then in prison or confined or restrained as aforesaid; and if the said party shall be then in prison, or so confined or restrained, then within two years after the decease of the person imprisoned, or so confined or restrained, or his or her delivery out of prison, or from such confinement or restraint.

Pleas of the defendant.

SEC. 15. *And be it further enacted*, That the defendant or defendants in or upon any action, suit, bill, plaint, or information, for any offence against this act, may plead the general issue, and give the special matter in evidence.

CHAPTER XI.

An Act to authorize the Governor of the Territory to offer Rewards for the Apprehension of Criminals.—*Passed November* 21, 1818.

Authorized to issue proclamation.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That the governor of the territory be, and he is hereby authorized, by proclamation to offer a reward not exceeding four hundred dollars, for the apprehension of any person who may be charged with any capital offence, and may have escaped from prison, or the custody of a legal officer, or who may have eluded arrest by flight or otherwise.

Draw on treasury.

SEC. 2. *And be it further enacted*, That the governor shall be authorized to draw on the territorial treasurer for any amount which may become due to any person or persons, in conformity to the provisions of this act.

CHAPTER XII.

Extract from "An Act to regulate Proceedings in Courts of Law and Equity in this State.—*Passed December* 14, 1819.

Jails of counties to be jails of circuit courts.

SEC. 11. *And be it further enacted*, That the common jail of each county shall be the jail of the court for the said circuit county: *Provided, however*, That nothing in this act contained shall be so construed as to prevent civil officers, judges, justices, &c. from transferring prisoners to the nearest jail which is good and sufficient, when the jail of the county where such prisoner may be arrested shall be considered insufficient.

CHAPTER XIII.

An Act authorizing and requiring the Keepers of the several Jails in this State, to receive and keep Persons committed under the Authority of the United States.—*Passed November* 30, 1820.

Keepers shall receive prisoners.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the common jails in the several counties, in addition to the purposes for which they are now used, shall be jails for receiving and safe-keeping such prisoners as shall be committed to the same, by virtue of any process to be issued under the authority of the United States, until they shall be discharged by due course of law.

Penalty for refusing.

SEC. 2. *And be it further enacted,* That the keepers of the said jails, respectively, are hereby required to receive the said prisoners, under the like pains and penalties for neglect of duty therein, as they now are by law in the case of prisoners committed under the authority of this state, agreeably to a resolution adopted by the congress of the United States, September 23, seventeen hundred and eighty-nine.

PUBLIC OFFICERS.—1807.

CHAPTER I.

An Act establishing the Place where the Officers therein named shall keep their respective Offices.—*Passed February* 10, 1807.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the secretary of the territory for the time being, shall keep the public records and documents belonging to his office, at the place designated by law for the sitting of the general assembly.

SEC. 2. *And be it further enacted,* That if any person or persons possessed of any of the records and public documents belonging, or in any manner appertaining to the government of this territory, which by the laws of the United States, and ordinance for the government of this territory, they may not have a right to retain, shall, on the application of the governor of this territory for the time being, who is hereby authorized to demand and receive the same, refuse to deliver such records and public documents, the person or persons so refusing shall forfeit and pay the sum of three thousand dollars, to be recovered and appropriated as aforesaid.

SEC. 3. *And be it further enacted,* That it shall be the duty of the attorney-general of this territory, and he is hereby required to prosecute and recover, in the name of the governor for the time being, for the use of the territory, all such sums as may become forfeited under this act.

Sheriffs to keep their office at the seat of justice.

SEC. 4. *And be it further enacted,* That the sheriffs of the several counties in this territory shall, after the passing of this act, keep their respective offices at the place designated by law for holding the courts of their respective counties.

Clerks of the circuit and county courts to keep their offices at the seat of justice.

SEC. 5. *And be it further enacted,* That the several clerks of the county and circuit courts within this territory, except the clerk of the county court of Washington county, shall, from and after the passing of this act, hold and keep their respective offices at the place designated by law for holding the courts of counties respectively.

SEC. 6. *And be it further enacted,* That should either the sheriffs or clerks mentioned in this act, neglect or refuse to comply with the requisitions of the said act, on or before the first day of February next, he or they so offending, shall forfeit and pay the sum of two thousand dollars, for the use of the territory, recoverable in any court of record within this territory, having competent jurisdiction of the same.

SEC. 7. *And be it further enacted,* That the attorney-general for the territory be, and he is hereby authorized and required to prosecute, in the name of the governor for the time being, for the use of the territory, and recover all such sums as may become forfeited under this act.

NOTE.—An Act, passed in 1807, suspended this Act until the first of February, 1808, and another Act, passed in 1808, suspended the fourth, fifth, and sixth sections of the above Act until the first of February, 1809, "and from thence until there should be proper buildings erected for the reception of the officers therein named."

CHAPTER II.

An Act respecting Oaths of Office.—First passed by the Governor and Judges, in February, 1799, and amended and re-enacted by the General Assembly, in 1807.

Every person appointed to civil office to take an oath.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That where no especial oath of office is prescribed by law, every person appointed to any civil office in this territory, and commissioned by the governor, shall previously to his entering upon the exercise of his office, take the following oath, viz.—" I, A. B. being appointed to the office of———, do solemnly swear, that I will well and truly execute the duties of my said office, according to the best of my skill and understanding, without fraud or partiality : So help me God."

Persons may affirm.

And any person appointed as aforesaid, conscientiously scrupulous of taking an oath, shall make the following affirmation, previously to entering upon the duties of his office, viz.—" I, A. B. being appointed to the office of———, do solemnly, sincerely, and truly declare and affirm, that I will well and truly execute the duties of my said office, according to the best of my skill and understanding, without fraud or partiality; and this I declare and affirm, under the pains and penalties of perjury."

Oath, before whom taken.

SEC. 2. *And be it further enacted,* That all the oaths of office, or declarations and affirmations, prescribed as aforesaid, shall be taken before the governor, or one of the territorial judges, or one of the justices of the county court of the county for which such officer may be appointed.

CHAPTER III.

An Act to amend an Act, entitled "An Act for the Limitation of Actions, and for avoiding Vexatious Law-suits," passed the second day of February, eighteen hundred and two.—*Passed December* 5, 1809.

Whereas by the fourth section of the before recited act, the securities of the respective clerks and sheriffs of the several counties in this territory, are not liable to be sued or prosecuted in any manner whatever, if they have remained and continued to be securities for the space of five years; therefore—

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the fourth section of the before recited act be, and the same is hereby repealed and made void; and that it shall be the duty of the clerks and sheriffs in the different counties of this territory, within six months from and after the passing of this act, to execute bonds with sufficient security or securities, for the faithful performance of the duties of their office as heretofore directed by law, under the penalty of one thousand dollars, recoverable by action of debt, in any court having competent jurisdiction; one half to the party suing for the same, and the other half to the use of the territory.

CHAPTER IV.

An Act supplementary to an Act, to amend the Act, entitled "An Act allowing compensation to the several Public Officers therein mentioned,* and for other purposes."—*Passed December* 9, 1811.

Clerk of the house of representatives may employ a reading clerk.

Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, That the clerk of the house of representatives shall, under the direction of the speaker thereof, be, and he hereby is authorized to employ a reading clerk whenever he may deem it expedient, and such reading clerk shall be entitled to demand, and receive for his services three dollars per day, to be paid out of the public treasury, and shall not be considered as any part of the compensation allowed to the clerk of the house of representatives, under the act to which this is an amendment.

CHAPTER V.

An Act concerning the Clerks of Courts, and to reduce into one the several Laws regulating Officers' Fees, and more particularly define the same.—*Passed December* 24, 1812.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That every person hereafter appointed clerk, or deputy clerk of any court in this territory, shall at the time of admission to such office, take the following oath in open court, viz: "I, A. B. do swear that I will well and truly exercise the office of ——— according to the best of my skill and judgment, making due entries and records of all orders, judgments, decrees, opinions, and proceedings of the court, and carefully filing, and preserving in my said office all books and papers whatsoever, which shall be delivered to me in charge, or otherwise come to my hands or possession, by virtue of my said office; that I will not wittingly or wilfully commit any malfeasance in office, but in all things, and at all times, keep my said office free and accessible to any person having a right or claim to business therein, and faithfully execute the duties thereof without favour, affection, or partiality: So help me God." And if any person shall presume to execute the office of clerk or deputy clerk of any court, without taking such oath, he shall forfeit and pay a sum not exceeding one thousand dollars, and suffer one year's imprisonment without bail or mainprize.

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* The original was passed in 1805, and repealed December, 1812.

Oaths of clerks.

SEC. 2. *And be it further enacted,* That if any clerk shall wittingly make any false entry, or raze a letter, or change any record in his keeping, belonging to his office, every such clerk so offending shall be amerced and imprisoned at the discretion of a jury, and shall moreover be liable to the action of the party aggrieved.

Penalty for false entry.

SEC. 3. *And be it further enacted,* That every clerk shall at the time of his admission, and qualification as aforesaid, enter into bond with security, to be approved of by the court, in the penalty of five thousand dollars, payable to the governor and his successors in office for the time being, with condition for the due and faithful execution of his office, and that he will not remove or carry, or suffer to be removed and carried out of the county, (where he is clerk of the county court) or district, (where it is a superior or other court of which he is clerk) the records and papers of the court whereof he is clerk, any part thereof except in cases allowed by law, which bond shall, by such clerk, be recorded, and then delivered to the presiding judge of the court, and be by him transmitted to the secretary's office, within three months after it is so executed, there to be registered, and safely kept, among the papers of his office, and may be prosecuted upon, and the penalty thereof recovered against any such clerk, for any malfeasance in office, and any clerk presuming to execute his office without first entering into such bond, shall forfeit and pay one thousand dollars, and suffer three months imprisonment. A copy of such bond shall be good in evidence, and have the same validity as the original, if it were present in court.

Clerks to enter into bond.

SEC. 4. *And be it further enacted,* That it shall not be lawful for the court of any county, or the clerk of such court, to remove, or cause to be removed, the records and papers of the same, or any part thereof, without the county, except in cases of actual invasion or insurrection, where, in the opinion of the court, the same will be endangered, or where, for want of such opinion, by the suddenness of the alarm or danger, the clerk

Records not to be removed.

shall at his own dircretion remove the same, returning them as soon as the alarm or danger ceases, or except in cases also provided for by law. Any member of a court, or the clerk of the same so offending herein, shall be deemed guilty of a misdemeanor in office, and forfeit therefor and pay the sum of one thousand dollars.

Clerk to keep an execution docket.

SEC. 5. *And be it further enacted*, That the clerk of every court shall enter in a docket or book to be kept by him for that purpose, a list of all executions by him issued, specifying therein the names of the parties, the amount of the judgment, interest, and costs distinctly, in such execution, the name of the person to whom it is delivered, to what county directed, the date when issued, and the return day thereof, and when the same is returned, shall without delay record the return at large on the same page or folio on which the execution is entered, and shall constantly carry the said book to the court of which he is clerk.

To certify an abstract of fines, penalties, &c.

SEC. 6. *And be it further enacted*, That it shall be the duty of each and every clerk of a court, to make out and certify to the auditor of public accounts, and county treasurer respectively, a fair abstract of all fines, amercements, and penalties, which shall be assessed, had, or recovered in his court, immediately after the end of every term, specifying therein the names of the persons, the amount of the judgment, and offence for which the recovery is had, and shall within one month after the rising of such court, cause the same to be transmitted to the auditor and county treasurer respectively.

Deeds to be recorded.

SEC. 7. *And be it further enacted*, That whereas several of the clerks of the county courts, as also the clerks of other courts in this territory, have neglected to record deeds, wills, and other matters of consequence in due season, and have carelessly and confusedly kept the files of papers in their offices, and neglected to make out proper indexes of the matters recorded, whereby great injury may ensue to persons concerned; that it shall be the duty of the justices of the county courts, and of the judges of every other court, under whatever name or style the court may be known, once in every year to appoint some of their own body, or other fit persons who will undertake the duty, to inspect the clerk's office of such court, and to make report *instanter*, or to the next court thereafter, the condition in which they find the records, and books and papers belonging to such office, which report shall be entered of record in the court, and where it shall appear by such report, that any clerk has neglected to record any deed, will, or other matter proper to be recorded in his office, within a reasonable time after the same shall have been lodged with such clerk to be recorded, or shall neglect to make out and keep a fair, correct index to the matters recorded in each and every book, or shall neglect to keep in regular file all the papers belonging to his office, keeping every subject matter in its proper and peculiar file, and the papers of each suit together, or shall fail to have complete records made up in due form in all causes in which a final judgment may have

Clerks to keep an index.

Records.

been rendered, within three months after the judgment or decision in such cause, in every such case the clerk so offending, shall be deemed guilty of a breach of his duty, and is hereby declared liable as in case of malfeasance in office.

Clerks to take oath.

SEC. 8. *And be it further enacted*, That each and every clerk of the county or other courts of this territory, shall at the first term of the court of which he is clerk, after this act shall commence and be in force, take the oath and give bond as by this act is directed, in case of clerks hereafter to be appointed, and in case of neglect or refusal to comply with the requisites of this section, each and every clerk neglecting or refusing, shall forfeit and pay a sum not exceeding one thousand dollars.

Records to be delivered over.

SEC. 9. *And be it further enacted*, That whenever the office of clerk to any court shall become vacant by any cause whatsoever, the records, papers, books, stationary, and every thing belonging or appertaining to the same, shall be delivered over to the successor in office, by the person or persons having the same, whenever demanded, under the penalty of five thousand dollars, to be recovered against such person and every of them so detaining the same, or any part thereof; and it is hereby declared to be the duty of such successor to demand, receive, and take into his care and safe-keeping, all the books, records, papers, stationary, and every other matter and thing appertaining to the office of which he is appointed successor; and in case of refusal or detention of them after demand as aforesaid, he shall moreover give information thereof to the attorney-general, who shall prosecute accordingly.

NOTE.—The remaining sections will be found under title "Fees."

CHAPTER VI.

An Act fixing the Compensation of the Members and Officers of the General Assembly, and for other purposes.—*Passed December* 24, 1812.

[SEC. 1. Fixed the compensation allowed the president of the council and speaker of the house of representatives at four dollars per day, and that of other members at three.]

Secretary. Clerk.

SEC. 2. *And be it further enacted*, That the secretary of the legislative council shall be allowed five dollars, and the clerk of the house of representatives five dollars per day, and each of them may, when it may be necessary, employ under the directions of the president of the council and speaker of the house of representatives, respectively, an engrossing clerk, who shall also be enrolling clerk, and shall receive each three dollars per day, and the clerk of the house of representatives may also, under the direction of the speaker thereof, employ, when necessary, an enrolling clerk besides, who shall likewise receive three dollars per day.

Auditor to issue warrant.

SEC. 4. *And be it further enacted*, That the compensation which shall be due to the members and officers of the general assembly, shall be certified by their president and speaker respectively, to the auditor of public accounts, who shall issue his warrant therefor on the territorial treasurers, which shall be paid out of the territorial treasury.

Repealing clause. SEC. 8. *And be it further enacted*, That the Act passed March 2, 1805, entitled "An Act allowing Compensation to the several Public Officers therein mentioned, and for other purposes," and all other acts and parts of acts coming within the purview of this act, be, and the same are hereby repealed.

CHAPTER VII.

An Act concerning the Clerks of Courts.—*Passed November* 29, 1815.

Clerks of court to enter into bond, &c. SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That hereafter it shall be lawful for clerks of courts of record, and their deputies, to take the oath of office, and enter into bond and security, conditioned according to law, before any judge of the superior courts of this territory, or justice of quorum of the proper county; which said bonds shall be disposed of according to law, by the person taking the same, any provision in any law to the contrary notwithstanding.

CHAPTER VIII.

Resolution concerning the Clerk of the Superior Court of Madison County.—*Passed December* 18, 1815.

Clerk's office of Madison county, where to be kept. *Resolved by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the clerk of the superior court of Madison county shall from and after the first day of May next, keep his office at, or within one mile of the court-house of said county, and in case of his failing or refusing so to do, he shall forfeit and pay for every month of such neglect or refusal, twenty-five dollars, to be recovered upon information before any justice of the quorum of the proper county, for the use of said county.

CHAPTER IX.

An Act concerning Jurors, and for other purposes.—*Passed December* 20, 1815.

Compensation to jurors. SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That each and every petit and grand juror of the original *venire*, shall be allowed the sum of one dollar for each and every day he shall attend in any court as a juror, to be paid out of any money in the county treasury not otherwise appropriated, on the certificate of the clerk of said court, in which shall be stated the number of days which such person attended as a juror, and the sum to which he is entitled; which certificate the clerk of said court is hereby required to issue accordingly, and the same shall be received in payment of county taxes.

Allowance to clerks and sheriffs for their public services, &c.

SEC. 2. *And be it further enacted*, That hereafter it shall be the duty of the county courts in each county, to make such allowance to the clerks and sheriffs of their several counties, for their public services rendered either in the superior or county court, as to said county court shall seem reasonable and just: *Provided*, the sum allowed shall not exceed fifty dollars per annum to any clerk or sheriff; also to allow to all constables the sum of one dollar for each day they shall be necessarily attending the superior court; which sums of money shall be paid out of the county treasury; and no clerk, sheriff, or constable, shall be entitled to receive any sum or sums of money out of the territorial treasury, under any pretext whatever, for public services rendered after the passage of this act.*

Tax on suits.

SEC. 3. *And be it further enacted*, That for the purpose of providing a fund to defray county expenses, the sum of two dollars shall be taxed in the bill of costs, on all suits hereafter to be commenced in this territory, and shall be assessed and collected at the same time and in the same manner as other costs of suits, and paid immediately after collection into the county treasury of the county wherein such suit was instituted; and also all fines and forfeitures shall hereafter be paid into the county treasury, and not into the territorial treasury; and the clerks of the courts shall return to the county treasury of their respective counties, an account of fines and forfeitures, in the same manner, and at the same time that they are now by law required to return the same to the auditor of public accounts, and to pay over the money when collected to the said county treasurer, at the same time, and in the same manner they are now by law required to pay the same into the territorial treasury; and the county treasurer is hereby required to proceed immediately against any officer who shall fail to comply with the provisions of this section.

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* An Act, passed in December, 1809, gave to the county courts the right of allowing to their clerks the sum of twenty-five dollars per annum for public services; and to the same courts, and to the superior courts, the right of allowing to the sheriffs the same sum per annum for each court. The circuit or superior court of law and equity in every county, was also authorized to allow the clerk of each of the said courts, for all public services, the sum of twenty-four dollars, to be paid out of the public treasury. It was supposed that this act was misconstrued and abused by some of the courts. An Act, therefore, passed in 1810, directed, that the above-mentioned act should not be so construed as to authorize an allowance by such superior court more to the clerk thereof than forty-eight dollars per annum: and it was finally repealed by an act passed in 1812, the beginning of which constitutes the preceding chapter. The only section in the act of 1810, (which is "An Act to amend an Act for the Appointment of an Auditor,") and which does not appear to be obsolete, or virtually repealed or superceded, is in the following.

"SEC. 5. *And be it further enacted*, That when any allowance shall be made by any court to any of its officers, or any other person, the clerk of such court shall make out a fair copy of such account thus allowed, and a certificate of such allowance, and recite therein under what statute it was made: and if the auditor of public accounts shall have doubts of the propriety of any such allowance, made as aforesaid, he shall not be authorized to issue his warrant therefor on the territorial treasury; but shall report the same to the general assembly, at their next session, and the courts shall not be authorized to make any allowance, unless authorized to do so under some statute of the territory."

SEC. 4. *And be it further enacted*, That all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER X.

An Act concerning Oaths of Office.—*Passed February* 13, 1818.

Governor may authorize persons to administer oaths.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That all oaths of office, or declarations, or affirmations prescribed by law, may be taken before such persons in the several newly established counties, as the governor may for that purpose depute and authorize in writing; and shall be as valid and obligatory to all intents and purposes, as if administered by the governor, or a territorial judge, or a justice of any county court.

CHAPTER XI.

Extracts from the Constitution of the State of Alabama, in relation to Public Officers.

ARTICLE IV.

SEC. 14. There shall be a secretary of state appointed by joint vote of both houses of the general assembly, who shall continue in office during the term of two years. He shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before the general assembly; and shall perform such other duties as may be required of him by law.

SEC. 15. Vacancies that may happen in offices, the appointment to which is vested in the general assembly, shall be filled by the governor, during the recess of the general assembly, by granting commissions, which shall expire at the end of the next session.

SEC. 23. A state treasurer and a comptroller of public accounts, shall be annually elected, by joint vote of both houses of the general assembly.

SEC. 24. A sheriff shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of three years, unless sooner removed, and who shall not be eligible to serve either as principal or deputy for the three succeeding years. Should a vacancy occur subsequent to an election, it shall be filled by the governor as in other cases, and the person so appointed shall continue in office until the next general election, when such vacancy shall be filled by the qualified electors, and the sheriff then elected shall continue in office for three years.

ARTICLE V.

SEC. 10. A competent number of justices of the peace shall be appointed, in and for each county, in such mode, and for such term of office, as the general assembly may direct. Their jurisdiction in civil cases shall be limited to causes in which the amount in controversy shall not exceed fifty dollars. And in all cases tried by a justice of the peace, right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

SEC. 11. Judges of the supreme and circuit courts, and courts of chancery, shall, at stated times, receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office: but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this state, the United States, or any other power.

SEC. 12. Chancellors, judges of the supreme court, judges of the circuit courts, and judges of the inferior courts, shall be elected by joint vote of both houses of the general assembly.

SEC. 15. Clerks of the circuit and inferior courts in this state shall be elected by the qualified electors in each county, for the term of four years, and may be removed from office for such causes and in such manner as may be prescribed by law; and should a vacancy occur subsequent to an election, it shall be filled by the judge or judges of the courts in which such vacancy exists; and the person so appointed shall hold his office until the next general election; provided, however, that after the year eighteen hundred and twenty-six, the general assembly may prescribe a different mode of appointment, but shall not make such appointment.

SEC. 18. There shall be an attorney general for the state, and as many solicitors as the general assembly may deem necessary, to be elected by a joint vote thereof, who shall hold their offices for the term of four years, and shall receive for their services a compensation, which shall not be diminished during their continuance in office.

ARTICLE VI.

SEC. 1. The members of the general assembly, and all officers, executive and judicial, before they enter on the execution of their respective offices, shall take the following oath or affirmation, to wit: "I solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States, and constitution of the state of Alabama, so long as I continue a citizen thereof, and that I will faithfully discharge to the best of my abilities, the duties of ——— according to law: So help me God."

SEC. 4. Every person shall be disqualified from holding any office or place of honour or profit under the authority of this state, who shall be convicted of having given or offered any bribe to procure his election or appointment.

CHAPTER XII.

An Act to provide for the Appointment of County Officers, and for other purposes.—*Passed December* 17, 1819.

NOTE.—The first three sections are under title "Justices of the Peace, and Constables."

County court to recommend coroner, auctioneers, and notaries public.

SEC. 4. *Be it enacted*, That the justices of the county courts, or a majority of them, shall recommend to the governor a fit person to act as coroner, and also a proper number to act as auctioneers and notaries public: and it shall be the duty of the governor to commission the persons so recommended: and the officers so commissioned shall respectively hold their offices for the term of three years from the dates of their commissions.

Coroners, &c. to give bond.

SEC. 5. *And be it further enacted*, That the said coroner, auctioneers, and notaries public respectively, shall, before they enter on the duties of their respective offices, give bond with sufficient security, to be approved of by the chairman of the county court of the several counties, in the sum of two thousand dollars, payable to the governor and his successors in office, for the faithful performance of their respective duties.

County surveyor and treasurer.

SEC. 6. *Be it enacted*, That there shall be appointed in each county in this state, by the county courts thereof, a county surveyor and treasurer, who shall hold their offices for the term of three years.

Treasurer to give bond.

SEC. 7. *Be it enacted*, That it shall be the duty of the county treasurer, before he enters on the duties of his office, to enter into bond with good and sufficient security to the county court of the county for which he may be so appointed, in such sum as said court may direct, for the faithful accounting for and paying over the moneys which may come into his hands as county treasurer.

Assessor and tax collector.

SEC. 8. *Be it enacted*, That there shall be appointed in each county in this state, by the county court of the respective counties, an assessor and tax collector, on the fourth Monday in January in each and every year, or sooner if the county court be in session before that time, who shall hold their office for the term of one year from the date of their commissions: and the several county courts shall, within forty days after said appointment, make return of the persons appointed to the governor, whose duty it shall be to commission the same: *Provided*, That in case of death, or failing to give bond and security as required in this act, the county court shall have power to fill such vacancy.

Proviso.

Assessor and collector to give bond.

SEC. 9. *And be it enacted*, That it shall be the duty of the said assessor and collector of taxes, respectively, before they enter on the duties of their offices, to enter into bond with sufficient security, to be approved of by the chief justice or chairman of the county courts of the counties respectively, for which they may be appointed, in such sum as said chief justice may direct, payable to the governor for the time being, and his successors in office, conditioned for the faithful performance of the duties of their offices respectively.

Oath of office.

SEC. 10. *And be it enacted*, That the persons appointed to fill the several offices mentioned in this act, shall, before they enter upon the duties of their respective offices, take an oath to support the constitution of the United States and of this state, together with an oath of office, as follows, to wit: "I —— ——, do solemnly swear (or affirm, as the case may be,) that I will execute the office of —— with impartiality to all persons, and agreeably to the best of my skill and judgment: So help me God."*

Elections, when held.

SEC. 11. *And be it enacted*, That the elections provided for by this act, shall be held on the first Monday in April next, except such as are herein before particularly specified.

Assessor to take the census.

SEC. 12. *And be it further enacted*, That it shall be the duty of the assessor of taxes in each and every county within this state, for the year one thousand eight hundred and twenty, to take an enumeration of the inhabitants therein, in the manner, and under the regulations and responsibilities which are prescribed by an act authorizing the taking the census of the Alabama territory, passed the ninth of February, eighteen hundred and eighteen.

Compensation therefor.

SEC. 13. *And be it further enacted*, That each and every assessor shall be allowed as a compensation for taking the census, as follows, to wit: when the census shall not exceed one thousand, two dollars per hundred; when it shall exceed one thousand, and not exceeding two thousand, one dollar seventy-five cents; when it shall exceed two thousand, and not exceeding three thousand, one dollar sixty cents; when it shall exceed three thousand, and not exceeding five thousand, one dollar thirty-three cents; when it exceeds five thousand, one dollar.

Sheriff to give bond.

SEC. 14. *Be it further enacted*, That all the sheriffs elected under the constitution of this state, shall, on or before the first Monday in April next, give bond with such number of good and sufficient securities as may be approved of by the county courts respectively, in such sum, in addition to the sum already required by law, as they may deem necessary and proper, made payable to the governor for the time being, and his successors in office; which bond shall be taken by said court, and deposited in the clerk's office: *Provided also*, That it shall be the duty of the sheriff to renew his bond annually, if required by the court.

Penalty for neglect.

SEC. 15. *Be it further enacted*, That any sheriff failing or neglecting to comply with the provisions of the preceding section, shall vacate his office, and said office is hereby declared vacated, and such vacancies, should any such occur, shall be filled in such manner as is now prescribed by the constitution for supplying vacancies for sheriffs.

[Sections sixteen and seventeen are inserted under Title "Executions."]

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* The first act concerning oaths of office will be found under this title, chapter 2.

Penalties for neglect of duties.

SEC. 18. *And be it further enacted*, That when any sheriff shall fail to perform the duties by this act required, the person or persons aggrieved, may move against such delinquent sheriff, and have judgment against such sheriff and his securities in office, for the amount he has failed to pay over as aforesaid, or for failing to return the execution in manner as above directed, in the court from which such execution had issued, upon giving three days notice of such motion to such delinquent sheriff or his securities in office: *Provided, however*, That time may be given to such delinquent sheriff to make his defence, upon good cause shown to the court before whom such motion may be made.

Vacancies of constables, how filled.

SEC. 19. *And be it further enacted*, That whenever a vacancy in the office of constable shall occur, or any case of emergency may require it, it shall be the duty of any acting justice of the peace, within the limits of the company where such vacancy may have occurred, to depute some fit person to fill the same, until one may be appointed, according to the provisions of this act.

When to take effect.

SEC. 20. *And be it further enacted*, That this act shall take effect and be in force, from and after the first day of January next.

CHAPTER XIII.

An Act prescribing the Duties of certain Public Officers.—*Passed December* 17, 1819.

NOTE.—The first three Sections of this Act will be found under Title "Attorneys and Solicitors."

Duties of secretary of state.

SEC. 4. *And be it further enacted*, That the secretary of state shall, in addition to the duties prescribed by the constitution of this state, perform all the duties heretofore appertaining to the office of territorial secretary, and shall be entitled to receive, in addition to the salary established by law, the compensation allowed for copying the laws and superintending the printing thereof; and also the sum of one dollar for each and every certificate and the annexation of the seal of the state thereto, which may be required by any person or persons, to any instrument, relating to contracts or other matters of private concern, to be paid by the party applying for the same.

Of comptroller.

SEC. 5. *And be it further enacted*, That the comptroller of public accounts shall perform the duties and be subject to the responsibilities heretofore appertaining to the office of auditor of public accounts.

Of state treasurer.

SEC. 6. *And be it further enacted*, That the state treasurer shall perform the duties, and be subject to the responsibilities heretofore appertaining to the office of territorial treasurer.

CHAPTER XIV.

Extracts from an Act to suppress Duelling.—*Passed December* 17, 1819.

SEC. 4. *And be it further enacted*, That all members of the general assembly hereafter to be elected, and all officers and public functionaries hereafter elected or appointed, under the authority of the constitution and laws of this state, shall, before they enter upon the discharge of the duties of their stations or offices, either civil, military, or otherwise, take and subscribe the following oath, (in addition to the oath prescribed by the constitution) before any judge of the circuit or county courts, or any justice of the peace, who shall deliver such oath to the clerk of the circuit court for safe keeping:—" I, ——— ———, do solemnly swear, that I have neither directly nor indirectly given, accepted, or knowingly carried a challenge, in writing or otherwise, to any person or persons, to fight in single combat or otherwise, with any deadly weapon, either in or out of this state, since I have been a citizen thereof, or aided or abetted the same, since the first day of January, eighteen hundred and twenty; and that I will neither directly nor indirectly give, accept, or knowingly carry a challenge in any manner whatsoever, to any person or persons, to fight in single combat or otherwise with any deadly weapon, in or out of this state, or in any manner whatsoever aid or abet the same, during the time for which I am elected, or during my continuance in office, or during my continuance in the discharge of any public function." And upon his or their refusing to take the oath aforesaid, his or their seat, if a member of the general assembly, or his or their office, or public function, or appointment, shall be vacated, and shall be filled in the same manner as if he or they had resigned.

CHAPTER XV.

An Act to provide for the Removal of the Public Offices.—*Passed December* 13, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all officers who are required by law to keep their offices at the seat of government of this state, shall remove the same to the town of Cahawba, within three months from and after the close of the present session of the general assembly; and the necessary expenses of removing the public seal, records, and papers, shall be paid out of any moneys in the treasury not otherwise appropriated.

CHAPTER XVI.

An Act prescribing the Manner in which the Oath of Office shall be administered to the Governor of this State, and certain other Officers therein named.—*Passed November* 9, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the oath or affirmation required by the first section of the sixth article of the constitution of this state, shall be administered to the governor by the speaker of the house of representatives, in presence of both houses of the general assembly.

Oath of members of general assembly, how administered.

SEC. 2. *And be it further enacted,* That at the first session of the general assembly of this state, after every general election, the oath or affirmation prescribed by the constitution, shall be administered to the members of the house of representatives, by a justice of the inferior court, or some acting justice of the peace, in the representative hall; and the speaker shall administer the oath to the clerk, previous to entering on any other business, and to the members who shall afterward appear, previous to their taking their seats. The president of the senate for the time being, shall also administer the said oath or affirmation to each senator, and also to the secretary of the senate, previous to his entering on the duties of his office. And whenever a president of the senate shall be elected, the same oath or affirmation shall be administered to him, by any one of the members of the senate.

Oath of other officers, how administered.

SEC. 6. *Be it enacted,* That all officers elected or appointed, or who shall be elected or appointed under the authority of this state, shall, before they act in their respective offices, take the oath or affirmation prescribed as aforesaid, which shall be administered by any judge or justice of the peace; the person so administering the oath hereby required to be taken, shall cause a record or certificate to be made, specifying the day and year the same was taken, which said record or certificate shall be, by said judge or justice, deposited with the clerk of the circuit court of the county, in which the same shall have been taken: *Provided,* That the record or certificate of the oath or affirmation, which shall be administered to the secretary of state, attorney general, solicitors, and judges of the several circuit courts, shall be deposited in the office of the secretary of state.

Proviso.

Penalty for neglecting the requisites of this act.

SEC. 4. *And be it further enacted,* That any officer or officers failing to comply with the provisions of this act, shall forfeit and pay the sum of five hundred dollars, one half to the treasury of this state, and the other half to the use of the person who shall sue for the same.

CHAPTER XVII.

An Act affixing Salaries to certain Offices within the State of Alabama.—*Passed December* 13, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the several officers hereinafter named, shall receive annually, and payable quarter yearly, for all the duties required of them by law, the following sums, to wit:

The governor, two thousand five hundred dollars; the judges of the circuit courts, each one thousand seven hundred and fifty dollars; the attorney-general, six hundred and twenty-five dollars. Governor. Judges. Attorney general.

The several solicitors, two hundred and fifty dollars each, with such fees or perquisites of office as may be by law allowed. Solicitors.

The secretary of state, one thousand dollars, with such fees as may be allowed by law. Secretary of state.

The comptroller, one thousand dollars; Comptroller.

The treasurer, one thousand dollars. Treasurer.

CHAPTER XVIII.

An Act to fix the Compensation of the Members of the General Assembly, and for other purposes therein named.—*Passed December* 17, 1819.

SEC. 2. *And be it further enacted,* That the following sums of money be, and the same are hereby appropriated: for the expenses of the general assembly, thirty thousand dollars; for the payment of the judges of the circuit courts, eight thousand seven hundred and fifty dollars; for the payment of the attorney-general, seven hundred and fifty-five dollars; for the payment of the solicitors, one thousand dollars; for the payment of the secretary of state, one thousand dollars; for the payment of the comptroller, one thousand dollars; for the payment of the adjutant-general, one thousand dollars; to the quartermaster-general, two hundred dollars; to the governor, twenty-five hundred dollars; to Thomas A. Rogers, for stationary and extra services, one hundred and seventy-one dollars; to the clerk of the senate, and clerk of the house of representatives, each seven dollars per day; to the assistant clerks, for each branch of the legislature, five dollars per day; for the doorkeepers, one to each house, four dollars per day; to be paid out of any moneys in the treasury not otherwise appropriated. Appropriations for the several officers of government.

SEC. 3. *And be it further enacted,* That the sum of ten thousand dollars be, and the same is hereby appropriated, as a contingent fund, subject to the order of the governor; out of which the governor is required to draw on the treasury, for the sums due, or which may fall due, to the officers of the territorial government, pursuant to the constitution. Contingent fund.

CHAPTER XIX.

An Act concerning the Appointment of County Officers —*Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That so much of an act providing for the appointment of county officers, passed on the seventeenth day of December, eighteen hundred and nineteen, as directs that constables, county treasurers, county surveyors, coroners, auctioneers, assessors, and tax collectors, shall be commissioned by the governor, be, and the same is hereby repealed.

SEC. 2. *And be it further enacted,* That the certificate of the chief justice of the county court, that the constable, treasurer, surveyor, coroner, auctioneer, assessor or tax collector (as the case may be) who may have been elected, has given bond and security as such, agreeably to law, shall be sufficient evidence of such officers' right and authority to exercise and perform the duties of the office to which he may have been appointed.

CHAPTER XX.

An Act to reduce the Expenses of the General Assembly, and for other purposes.—*Passed June* 15, 1821.

Compensation of members.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the President of the Senate, and Speaker of the House of Representatives, shall be entitled to receive six dollars per day; and each other member shall receive four dollars for every day's attendance at the general assembly, and shall be allowed four dollars for every twenty miles travelling to and from the general assembly, and in that proportion for a shorter distance; and if any member shall be detained by sickness after leaving home, in coming to, or be unable to attend the house after he arrives at the place where the general assembly shall sit, he shall be entitled to the same daily allowance of an attending member.

Clerk's pay. Assistant. Doorkeepers.

SEC. 2. *And be it further enacted,* That the clerk of the House of Representatives, and the secretary of the Senate each shall be allowed seven dollars per day; to the assistant clerks of each branch of the Legislature, five dollars per day, for the door-keepers, one to each house, four dollars per day. All acts contravening the provisions of this act shall be and are hereby repealed.

Salaries. Governor. Attorney general. Solicitors. Proviso.

SEC. 3. *And be it further enacted,* That the several officers herein after named, shall receive annually, and payable quarterly, for all the duties required of them by law, the following sums, to wit: the Governor, two thousand dollars; the Attorney General, the sum of three hundred dollars; the several Solicitors, one hundred and fifty dollars each. And that this act shall not be so construed as to affect the salaries of any officers for the time they may have been elected heretofore.

Compensation to sheriff of Dallas county.

SEC. 4. *And be it further enacted*, That the sheriff of Dallas county shall be entitled to, and receive out of the public treasury, in full compensation for his services, three dollars per day for attending the court of errors and appeals, also such sum as the court may allow for the rent of the house for the use of said court, to be paid by the treasurer, on the certificate of the clerk of said court.

CHAPTER XXI.

An Act to repeal so much of the Third Section of an Act, entitled "An Act to reduce the Expenses of the General Assembly, and for other purposes, passed at Cahawba the 15th day of June, 1821, as is herein specified.—*Passed December* 13, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That so much of the third section of an Act passed at Cahawba on the fifteenth day of June, eighteen hundred and twenty-one, entitled An Act to reduce the Expenses of the General Assembly, and for other purposes, as relates to the salaries of the solicitors of this state, be, and the same is hereby repealed.

CHAPTER XXII.

An Act providing for the Election of Sheriff in certain cases, and for other purposes.—*Passed December* 28, 1822.

Governor to issue writ of election for sheriff in certain cases.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That when the officer whose duty it is to hold an election for sheriff in any county in this state, shall fail to do the same at the time prescribed by law, it shall be the duty of the governor, or the person exercising the duties of his office, to issue his writ of election, directed to any person residing in the county whom he may appoint, directing the person to hold an election for the purpose of electing a sheriff for the county, at the place or places prescribed by law for holding elections for representatives for the county, at any time he may appoint; requiring at least thirty days notice to be given by advertisement posted up at four of the most public places in the county, of the time of holding said election.

Polls to be kept open agreeably to law.

SEC. 2. *And be it further enacted*, That at the election hereby authorized to be held, the polls shall be opened and kept open, agreeably to the law now regulating elections in the county in which it shall be held.

Clerks and judges to be appointed and qualified.

SEC. 3. *And be it further enacted*, That the clerks and judges who shall superintend the election hereby authorized, shall be appointed by the person to whom the commission shall be directed, who shall be authorized to administer the oaths to said clerks and judges as are required to be administered to clerks and judges at the general elections.

Person returned to be commissioned.

SEC. 4. *And be it further enacted*, That the person who shall be returned duly elected by the person to whom the writ of election is directed, shall be commissioned by the governor, or the person exercising the duties of his office, sheriff.

CHAPTER XXIII.

An Act to authorize the Judges of the County Courts and Commissioners of Roads and Revenue within this State, to make an Allowance therein named. *Passed December* 30, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the judges of the county courts and commissioners of roads and revenue are hereby authorized to make an allowance to the clerks of the county and circuit courts, for books and stationary purchased by said clerks for the use of their offices respectively.

To allow for books, &c.

CHAPTER XXIV.

An Act to provide for the Election of Justices of the Peace, and Constables.—*Passed December* 31, 1822.

NOTE.—This Act will be found under title 39, chapter 11.

CHAPTER XXV.

An Act to legalize the Election of certain Officers in Decatur County.—*Passed December* 31, 1822.

Preamble.

Whereas it is represented to this general assembly, that on account of the acts of the last general assembly not having been received, the election of clerks of the circuit and county courts, and sheriff of Decatur county, which was directed to be held on the second Monday in February, by an Act to establish the Temporary Seat of Justice in the County of Decatur, and for other purposes, approved on the thirteenth day of December, eighteen hundred and twenty-one, was, by mistake, held on the first Monday in February instead of the second, as directed by said act, but was in all other respects held fairly and according to law: Therefore,

Elections declared valid.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That said election shall be valid to all intents and purposes, and all the official acts of those who were elected sheriff and clerks as aforesaid, shall be as good, legal, and valid, as if said election had taken place on the said second Monday in February.

To commence.

SEC. 2. *And be it further enacted*, That this act shall be in force from and after the passage thereof.

CHAPTER XXVI.

An Act relative to the Securities of Clerks, Sheriffs, and other Officers.—*Passed December* 31, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, it shall be the duty of the judge of the county court, whenever application shall be made to him by the security or securities, or either of them, of any clerk or sheriff, or other officer of any county in this state, to issue a citation to the said clerk, sheriff, or other officer, to appear before him on some day therein named, not less than ten nor more than fifteen days, then and there to enter into a new bond, with good and sufficient securities, for the faithful execution of the duties of his office. Securities relieved on application. New bond required.

SEC. 2. *And be it further enacted,* That upon the execution of such new bond by the said clerk, sheriff, or other officer, the security or securities making application, shall be discharged from the obligation of the bond previously entered into by them: *Provided,* That nothing herein contained shall discharge the security or securities from any liability which they had before that time incurred. Securities discharged. Proviso.

SEC. 3. *And be it further enacted,* That if any clerk, sheriff, or other officer, being duly served with a citation as aforesaid, shall fail or refuse to give the bond as aforesaid required, then and in that case it shall be the duty of the judge of the county court to decree the office of the said clerk, sheriff, or other officer, to be vacated; and shall cause an entry thereof to be entered upon the records of the county court; and such vacancies shall be filled as now prescribed by law. Clerks refusing to give bond, vacate their office. Vacancy, how filled.

CHAPTER XXVII.

An Act to make Appropriations for the year Eighteen Hundred and Twenty-Three.—*Passed January* 1, 1823.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the following sums of money be, and they are hereby appropriated, to defray the expenses of the civil list, and other necessary charges of government, namely: For the pay of the members of the general assembly, and their expenses at the present session, twenty-five thousand dollars; for the payment of the annual salary of the governor of this state, two thousand dollars; for the contingent fund, to be subject to the orders of the governor of this state, two thousand dollars; for the payment of the annual salaries of the judges of the circuit courts, seventeen hundred and fifty dollars each, making ten thousand five hundred dollars; for the payment of the annual salaries of the secretary of state, comptroller, and treasurer, one thousand dollars each, making three thousand dollars; for the payment of the annual salary of the attorney-general, six hundred and fifty dollars; for the payment of the annual salaries of the circuit solicitors, two hundred and fifty dollars each, making twelve Appropriations. Members. Governor. Contingent fund. Judges. Executive officers. Attorney general. Solicitors.

Adjutant and quartermaster general. Officers of general assembly.

hundred and fifty dollars; for the payment of the adjutant-general, one hundred dollars; for the payment of the quartermaster general, one hundred dollars; for the payment of the secretary of the senate, and clerk of the house of representatives, each seven dollars per day; and for the payment of the assistant-clerks of both branches of the general assembly, each five dollars per day; for the payment of the door-keepers of the senate and of the house of representatives, each four dollars per day; to be paid out of any money in the treasury not otherwise appropriated.

Clerk of the house of representatives.

SEC. 2. *And be it further enacted*, That the clerk of the house of representatives be allowed seventy-five dollars for *ex-officio* services, to be rendered in arranging the public papers and preparing the journals for the press.

Secretary of state.

SEC. 3. *And be it further enacted*, That two hundred dollars be appropriated as compensation to the secretary of state, for copying the laws and journals of the present session of the general assembly, and preparing them for the press.

Public printer. Militia and patrol law printed, to be distributed.

SEC. 4. *And be it further enacted*, That the sum of eighteen hundred dollars be appropriated for the payment of the salary of the state printer, also the further sum of forty dollars be appropriated for the purpose of printing and distributing fifteen hundred copies of the militia and patrol laws, enforced in eighteen hundred and twenty-three; and that the secretary of state is hereby required to contract for printing and distributing the same; one copy to each militia officer in this state, to be left with the clerks of the circuit courts in the same way that the acts and journals are to be deposited, and the balance of said copies to be by him kept for further disposition; and also the further sum of two hundred and forty dollars is hereby appropriated to William B. Allen, as compensation for printing the bills, &c. done for the general assembly during the present session.

Appropriation to W. T. Gamble.

SEC. 5. *And be it further enacted*, That the sum of one hundred and fourteen dollars be appropriated to William T. Gamble for the hire of a servant, for wood and articles furnished for the use of both houses of the general assembly during the present session.

Comptroller.

SEC. 6. *And be it further enacted*, That the sum of forty dollars be appropriated for the payment of postage on public letters and packages sent to the comptroller.

H. Toulmin.

SEC. 7. *And be it further enacted*, That the sum of fifteen hundred dollars be appropriated towards the payment of Harry Toulmin, as compensation for digesting the laws of this state:

Proviso.

Provided, That nothing in this act shall be so construed as to prevent the next legislature from making any additional compensation that they may deem just and proper.

Printing digest.

SEC. 8. *And be it further enacted*, That the sum of eight thousand dollars be appropriated towards defraying the expenses of printing and distributing the Digest when completed.

Ginn and Curtis.

SEC. 9. *And be it further enacted*, That the sum of one hundred and eighty-four dollars and seventy-eight cents be appropriated for the payment of Ginn & Curtis, for stationary and candles furnished both houses of the general assembly at the present session.

H. W. Taylor.

Sec. 10. *And be it further enacted by the authority aforesaid,* That the sum of twenty dollars be allowed to H. W. Taylor for his services as judge advocate in a court-martial for the trial of a contested election of a major-general in the fourth division of the militia of this state, to be paid out of any money in the treasury not otherwise appropriated.

Governor to draw on contingent fund for fuel, &c.

Sec. 11. *And be it further enacted,* That it shall be lawful for the governor to pay out of the contingent fund, such sum or sums of money as may be necessary to defray the expenses incurred in the purchase of fuel and candles necessary for the use of the different offices belonging to the executive department of this state.

Appropriation to secretary of senate.

Sec. 12. *And be it further enacted,* That the sum of seventy-five dollars be allowed the secretary of the senate for *ex officio* services in arranging the papers of the senate, and preparing the journals for the press.

M. D. Thomason.

Sec. 13. *And be it further enacted,* That the sum of eighty-six dollars and twenty-five cents be, and the same is hereby appropriated to Matthew D. Thomason, door-keeper of the senate, for certain repairs done to the senate chamber, including the president's chair, and locks for the tables and doors, candles and candlesticks, &c.

Rob. Coyle.

Sec. 14. *And be it further enacted,* That the sum of one hundred and seventy-nine dollars be, and the same is hereby appropriated to Robert Coyle, pursuant to an act passed at the present session, approved on the twenty-fourth day of December, eighteen hundred and twenty-two.

Comptroller.

Sec. 15. *And be it further enacted,* That the sum of two hundred and fifty dollars be, and the same is hereby appropriated to the comptroller of public accounts, in pursuance of a resolution of the general assembly, passed and approved on the seventeenth of December, eighteen hundred and twenty-one.

G. V. Dick.

Sec. 16. *And be it further enacted,* That the sum of forty-five dollars be allowed to George V. Dick, for extra services this session, and that the same be paid out of any moneys in the treasury not otherwise appropriated.

J. H. Thorington.

Sec. 17. *And be it further enacted,* That the sum of twenty-five dollars be appropriated for the pay of John H. Thorington, for taking charge of, and keeping the state-house for the last year.

Sec. 18. *And be it further enacted,* That the sum of twelve dollars and fifty cents be allowed to Matthew D. Thomason for extra services as door-keeper of this house.

CHAPTER XXVIII.

[*] An Act making Appropriations for the Payment of certain Claims against the State.—*Passed January* 1, 1823.

Richard R. Doyle, W. R. Colgin.

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[*] The Editor did not believe it necessary to insert this act and the following at length. The above are the names of those for whose benefit appropriations were made.

CHAPTER XXIX.

An Act to make Appropriations for certain Claims against the State.—*Passed January* 1, 1823.

Daniel Rather, Thomas H. May, John Bush, Thaddeus A. Reid, Alfred Dawdey, John Henderson, James Johnson, James A. Bates, James M'Donald, Thomas A. Stone, Peter W. Taylor, Jesse Beene, John C. Clopper, Walter R. Ross, Thompson White, William M'Curdy, John H. Gray, John B. Patrick, James V. Thomas, Daniel Rather, William Y. Glover, Ginn & Curtis, Daniel Rather, Merrit Ware, Eugenius Campbell, John Henry, John H. Thorington, Joseph Graham, John B. Norris, The commissioners appointed under the act of December 17, 1821, Timothy Merrick, James Benham, John P. Cunningham, John Cunningham.

CHAPTER XXX.

Resolutions to repeal a Resolution allowing to the Comptroller two hundred and fifty dollars in addition to his present Salary, passed at the last Session of the General Assembly.—*Passed December* 31, 1822.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That the resolution entered into, and which was approved December the seventeenth, eighteen hundred and twenty-one, allowing the comptroller of public accounts the additional sum of two hundred and fifty dollars, be, and the same is hereby repealed.

And be it further resolved, That the foregoing resolution shall not be so construed as to repeal the appropriation allowed for the year past, but to operate for the future.

PUBLIC HEALTH.—1807.

CHAPTER I.

An Act to prevent the Importation and Spreading of the Small-Pox, and other Contagious Diseases.—*Passed February* 10, 1807.

Penalty for spreading infectious diseases.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That if any person or persons whatever, shall wilfully and designedly presume to import or bring into the territory, from any country or place whatever, the small-pox, or any variolous or infectious matter of the said disease, for the purpose, or with a design to spread the same, by inoculation or otherwise; or shall inoculate, or procure inoculation for the small-pox, after such disease may have been introduced, except under such regulations and restrictions as shall herein after be named; he, or she so offending, shall forfeit and pay a sum not exceeding two thousand dollars, and be imprisoned a term not exceeding twelve months, for every offence so committed.

Governor to prevent the spreading of the small-pox.

Sec. 2. *And be it further enacted*, That the governor is hereby authorized, on knowing from his own observation, or by information being given to him by any physician, that the plague, yellow fever, small-pox, or other contagious disorder, has been introduced into a neighbouring country, or found admittance within this territory; or on board any boat or vessel, at or near the shores of the same; to take such measures to prevent a communication of the infection, and for the aid and comfort of the sick when within the said territory, as he shall deem meet. And all expenses incurred in the prosecution of this humane intention, shall, by warrant of the governor, be paid out of the moneys of the territorial treasury, not otherwise appropriated: but in all cases, the said expenses shall be reimbursed by the person or persons for whom such provisions shall have been made; they being of ability to pay the same.

Persons wishing to be inoculated.

Sec. 3. *And be it further enacted*, That whereas in certain cases inoculation for the small-pox may not only be a prudent, but a necessary measure for securing those who are, or may be unavoidably exposed to the danger of taking the disease in the natural way; and for this reason it is judged expedient to tolerate the same, under certain reasonable regulations and restrictions: *It is provided*, therefore, that if any person or persons, who may wish to be inoculated, shall petition the governor to that effect, he may appoint him or them a place within this territory, that will not endanger the health of the citizens of the same, where the petitioner or petitioners shall resort for the purpose of being inoculated. And should any master or mistress of a family think him or herself, his or her family in danger of catching the small-pox in the natural way, such person shall give like notice to the governor: and if he shall deem it prudent and proper, and not dangerous to the health and safety of the people of this territory, for such person or family to be inoculated, he may admit of the same or otherwise as to him shall seem expedient.

Patient to obtain certificate before he goes abroad.

Sec. 4. *And be it further enacted*, That no patient in the small-pox shall, until after having obtained a certificate from the attending physician, or other person qualified to give such certificate of his, her, or their recovery; and of their being perfectly clean in their person and clothes, remove from the place where he, she, or they shall have had the small-pox, to go abroad in the company of other people, who have not had the disease; or go into any public road or highway, where travellers usually pass, without retiring out of the same; or giving notice on the approach of any passenger, under the penalty of forfeiting and paying for every such offence, the sum of one hundred dollars; and if a servant or slave, to be paid by his or her master or mistress.

Fines, how recoverable.

SEC. 5. *And be it further enacted,* That all moneys forfeited under this act, may be sued for in any court of record within this territory, having jurisdiction of the same. And the moneys so recovered, shall be appropriated, the one half to the informer, and the other half paid into the treasury of this territory.

SEC. 6. *And be it further enacted,* That this law shall be in force from and after the passage thereof.*

CHAPTER II.

An Act to promote Health by preventing the Sale of Unwholesome Liquors and Provisions.—*Passed December* 27, 1815.

Clause against selling unwholesome food and liquors.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That if any butcher, baker, brewer, distiller, tavern keeper, retailer of wines or spirituous liquors, or other person or persons, shall sell, offer, or expose to sale, or suffer or permit their servant or servants, or other person for him, her, or them, to sell, offer, or expose to sale, any tainted, putrid, or unwholesome fish or flesh, or the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased for the purpose of being sold or offered for sale; or any tainted, putrid, or unwholesome bread, or other cooked or raw food of any kind whatever; or any adulterated or unwholesome wines or spirituous liquors; shall for every such offence, on conviction thereof, before any justice of the peace within the county or corporation where the offence was committed, on the evidence of any two credible witnesses, forfeit and pay a fine of five dollars, with costs, one half to the prosecutor, and the other half to the overseer of the poor of the district where the offence was committed, for the use of the poor thereof.

Respecting bakers.

SEC. 2. *And be it further enacted,* That it shall be unlawful for any baker, his or their servant or servants, or other person or persons to sell, offer or expose to sale, any bread without having the baker's surname, and the initials of his christian name, legibly marked on each and every loaf, cracker, cake, piece, or division of any kind of bread, offered or exposed to sale by whatever name the same may be called, shall for every such offence forfeit and pay five dollars with costs, recoverable before any justice of the peace, of the county or corporation where the same was offered for sale; on the evidence of one credible witness, one half of the fine to the overseer of the poor for the district where the offence was committed, and the other half to the prosecutor; and shall moreover forfeit all such unwholesome bread, so offered for sale, for the use of the said poor.

SEC. 3. *And be it further enacted,* That any person or persons, who shall follow the business of a baker within said territory, shall have the initial of his given name, and his surname at full length, as is intended and directed by the second section of this act, put on record, in the office of the register of the orphans' court of his proper county, or in the office of the clerk of the corporation where he may reside, and any person or persons who shall counterfeit, or mark the same, shall for every such offence forfeit and pay twenty dollars, on conviction, recoverable with costs before any justice of the peace of the proper county, or corporation, for the use of the poor where the offence was committed.

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* An Act, entitled "An Act to prevent the Importation of Distempered Cattle into this Territory; passed September 21st, 1799," will be found under title 11, "Cattle, Horses, and other Stock."

CHAPTER III.

An Act concerning Indian Creek in Madison County.—*Passed December* 16, 1811.

Whereas a number of persons have settled on Indian creek, in Madison county, who are obliged to make frequent use of the water thereof for drinking and other purposes:

To secure the water of Indian Creek from contamination and pollution.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That it shall not hereafter be lawful for any person or persons to contaminate or pollute the water thereof, by casting therein dead animals of any kind, or any filth or polluted matter of any description whatever; and any person or persons, who shall be guilty of casting in the said creek any dead animal, or any filth calculated to pollute, and render the water thereof impure, shall be subject to a penalty of five dollars for the first offence, to be recovered before any justice of the peace in said county, and for every such offence thereafter, ten dollars, to be recovered in like manner.

Penalty.

SEC. 2. *And be it further enacted,* That when any fine shall be collected by authority of the above act, it shall be paid to the county treasurer, and appropriated to the use of said county.

PUBLIC LANDS.—1819.

CHAPTER I.

An Act to Lease certain Salt Springs.—*Passed December* 17, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the governor be, and he is hereby authorized to appoint one fit and proper person, who shall have power to lease the salt springs and lands donated by the congress of the United States, by the act of the second of March, eighteen hundred and nineteen, to this state, for a term not exceeding that stipulated in said act of congress, on such terms as will ensure the working the same most extensively, and most advantageously to this state.

NOTE.—The Acts which provide for the Sale of Lots in the town of Cahawba, will be found among the Laws relative to that Town, under Title 62, "Towns."

CHAPTER II.

An Act to enable the Governor to ascertain the Quality and Value of certain Lands in this State.—*Passed November* 19, 1819.

Governor may employ a person to examine unsold lands.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the governor be, and he is hereby authorized to employ one or more persons to examine and report to him the quality and value of the lands in such parts of this state which have not yet been sold, as he may designate.

Fivehundred dollars appropriated.

SEC. 2. *And be it further enacted,* That a sum not exceeding five hundred dollars be, and the same is hereby appropriated for that purpose, to be paid out of any moneys in the treasury not otherwise appropriated.

SEC. 3. *And be it further enacted,* That the person or persons employed, pursuant to this act, shall take the following oath, to be administered by any justice of the peace :—"I, —— ——, do solemnly swear, (or affirm) that I will examine, and true report make, relative to the quality of the unsold lands in this state, so far as I am instructed, to the best of my skill and ability: So help me God."

CHAPTER III.

An Act to authorize the Governor to sell Lots on the Public Lands east of the Alabama River, and opposite the Town of Cahawba.—*Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the acting governor be authorized, and he is hereby required to cause to be laid out and exposed to sale, on the public lands, on the east side of the Alabama river, opposite the town of Cahawba, under the same rules and regulations that lots in Cahawba have been sold, a number of lots containing one-half acre each, and not exceeding the number of fifty.

CHAPTER IV.

An Act for the Relief of Purchasers of Lots at the First Sale, in the Town of Cahawba.—*Passed December* 12, 1822.

Relief extended.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the benefit of an act, entitled "An Act for the Relief of Purchachasers at the First Sale of Lots in the Town of Cahawba," passed the twenty-eighth day of November, eighteen hundred and twenty-one, be, and the same is hereby extended until the twentieth day of May, eighteen hundred and twenty-three, to all legal holders of lots that failed to apply in the time prescribed by that act: *Provided, however,* That nothing herein contained shall be so construed as to exempt such persons failing as above from paying into the treasury of the state, the instalment which becomes due on the first day of December, eighteen hundred and twenty-two, pursuant to the provisions of the above recited act, before any such relief is extended.

Proviso.

CHAPTER V.

Resolution for the Relief of Anderson Crenshaw.—*Passed December* 28, 1822.

Whereas Anderson Crenshaw hath failed to avail himself of the benefit of an act of the last session of the legislature, passed for the relief of the first purchasers of lots in the town of Cahawba; therefore,

Be it resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That Anderson Crenshaw be entitled to a discount of fifty per cent. on the balance due on a lot owned by him at the passage of the said act, and which was purchased at the first sale of lots in the town of Cahawba: *Provided,* he make full payment for the same, on or before the first day of January next; and that on making such payment, he be entitled to a patent for said lot.

CHAPTER VI.

Resolutions concerning Purchasers of Lots in Cahawba.—*Passed December* 31, 1822.

Whereas sundry proprietors of lots, purchased at the first sale of lots in the town of Cahawba, who obtained an extension of credit thereon, according to the provisions of an act of the last session, for the relief of such persons, have failed to pay the first instalment thereon by the first of December, eighteen hundred and twenty-two, as required by said act; therefore,

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That all such purchasers or legal holders of lot certificates as above described, be permitted at any time, on or before the twentieth day of May, to pay the first instalments thereon, and receive the discount of twenty-five per cent. in the same manner as if said payments had been made on the said first day of December, eighteen hundred and twenty-two.

RECORDS.—1807.

CHAPTER I.

Extract from " An Act establishing Superior Courts, and declaring the Powers of the Territorial Judges."—*Passed February* 10, 1807.

Clerks to make complete records.

SEC. 50. *And be it further enacted*, That it shall be the duty of every clerk of the several courts in this territory, within three months after the final determination of any suit or prosecution, to make up and enter in well-bound books, to be kept by him for that purpose, a full and complete record of all the proceedings in such suit or prosecution: and every clerk who shall fail to make and enter a record as aforesaid, shall forfeit and pay the sum of twenty dollars, to be recovered before any court having jurisdiction thereof, and applied to the use of the territory. And in order to secure a due execution of the duty hereby required, the several parties to the suits or prosecutions, shall at all times have a right to inspect the said books and records of the court, in the presence of the clerk, in order to see if the records of the suit to which he is a party, hath been duly made up according to the directions of this act; and the clerks shall show the said records and books accordingly, under the penalty of fifty dollars, to be recovered and appropriated to the use of the party so applying and refused.

NOTE.—" An Act establishing the place where the officers therein named shall hold their respective offices," which determines where certain records shall be kept, is inserted under title 50, " Public Officers."

CHAPTER II.

An Act concerning certain Records therein mentioned, originally passed February 10, 1803; but constituting the 23d section of " An Act respecting Conveyances," in Toulmin's Digest.

Preamble.

Whereas no legal provision hath yet been had for the safekeeping, preserving, and certifying the records and papers of the office of clerks and recorders, which were kept during the administration of the Spanish government:

A keeper and translator of Spanish records to be appointed.

Be it therefore enacted, That the governor shall, immediately after the passage of this act, appoint and commission some person properly qualified, to keep, translate, and preserve the same, and the said officer so appointed, is hereby authorized to give copies of all and singular the said papers and records whenever thereunto required, and certify the same under his hand and official seal, for which he shall receive a fee of twenty-five cents for every hundred words, and for every translation certified as aforesaid, a fee of fifty cents per hundred words; and the person so appointed, before he enters upon the exercise of his office, shall give bond and security, payable to the governor and his successors in office, in the penal sum of five thou-

His fees.

To give bond, &c.

sand dollars, conditioned for the safe-keeping of the said papers and records, and the faithful discharge of his office; which bond shall be lodged in the office of the secretary of this territory, and may be put in suit by the party or parties injured, in his or their own names, and shall not become void upon the first recovery, but may from time to time be put in suit by action of debt, until the penalty be recovered.

NOTE.—Sundry provisions with regard to false entries, the erasure of records, and removal of them from the place by law established, will be found under title 50, "Public Officers," chapter 5.

CHAPTER III.

Resolution relative to the Safe-keeping of the Records of the General Assembly. *Passed December* 27, 1814.

Records of general assembly, secretary of council, and clerk of the house of representatives—their duty respecting them.

Resolved by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, That it shall be the duty of the secretary of the legislative council, and clerk of the house of representatives, at the end of the present session, to separate as far as may be practicable, the papers belonging to the general assembly, and put the same up in files; placing in one file those of the same kind, and marking thereon the session and house to which they respectively belong, and shall place the same in the presses belonging to the legislature, those of the council in one, and those of the house of representatives in the other; and the secretary of the council, and clerk of the house of representatives, shall, at the end of every session hereafter, rent a room exclusively for the safe-keeping of the papers and furniture belonging to both houses, and shall employ some person to take charge thereof: *Provided*, That the expense attending the same shall not exceed the sum of seventy-five dollars per annum.

Compensation.

CHAPTER IV.

An Act providing for the Translation and Preservation of Spanish Records within this Territory, and for other purposes.—*Passed December* 11, 1816.

Spanish records to be translated and recorded in bound books.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That in addition to the duties already prescribed by law for the keeper and translator of the Spanish records, it shall be the duty of that officer to make a faithful translation, and record in well-bound books, to be by him provided for that purpose, of all the records belonging to his said office, and of all the Spanish records now remaining at the town of Mobile; and the said keeper and translator shall record in separate books, those records relating to trials and judgments in suits, and those relating to coveyances of real and personal estate; and it shall also be the duty of said keeper and translator, to make a complete index in alphabetical order of the contents of each volume, to be therein contained.

Index to books.

Compensation to translator and recorder.

SEC. 2. *And be it further enacted*, That the said keeper and translator shall be entitled to twenty-five cents for every hundred words he shall so translate and record, in full compensation thereof, to be paid on the certificate of the secretary of this territory to the auditor of public accounts, and on the auditor's warrant, out of the territorial treasury; and the said books to be procured for the purposes aforesaid, shall be paid for in like manner.

Books to be paid for by the territory.

When work completed, to be deposited in office of register of the orphan's court of Adams and Mobile counties respectively, and thereon the office of keeper, &c. to be abolished.

SEC. 3. *And be it further enacted*, That after the completion of the translations and recording aforesaid, it shall be the duty of the said keeper and translator to deposite with the register of the orphans' court of Adams county, the books of records, together with the originals of the records, at present appertaining to the office of keeper and translator aforesaid; and with the register of the orphans' court of Mobile county, the books of records, together with the originals of the records aforesaid, now remaining at the town of Mobile aforesaid; and immediately after the completion of said duties of said keeper and translator, his office shall be abolished.

Registers to keep said books, and certify them as other records—to receive same fees therefor.

SEC. 4. *And be it further enacted*, That it shall be the duty of the said registers respectively, to receive said books and original records, directed as aforesaid to be to them delivered respectively, and to keep and preserve the same, in the same manner as the other records appertaining to their offices, are by law directed to be kept and preserved, and also to give copies and allow inspection thereof as of other records, and to receive the same fees therefor; and copies of such records duly certified, shall be received and read in evidence in the same manner and with like effect as other certified copies of records appertaining to the said register's office respectively.

Keeper, &c. allowed mileage between Natchez and Mobile.

SEC. 5. *And be it further enacted*, That the said keeper and translator shall be entitled to receive three dollars for every thirty miles he shall travel in going the customary road from Natchez to Mobile, in discharge of the duties required of him by this act, to be paid out of the territorial treasury in like manner as the compensation above allowed him.

CHAPTER V.

An Act to authorize the appointment of a Keeper and Translator of the Spanish Records and Papers in the Alabama Territory.—*Passed November* 21, 1818.

Preamble.

Whereas no legal provision hath been made for the safe-keeping, preserving, and certifying the records and papers of the office of clerks and recorders, which were kept during the administration of the Spanish government:

SEC. 1. *Be it therefore enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That the governor shall, immediately after the passage of this act, appoint and commission some person, properly qualified, to keep, translate, and preserve the same; and the said officer, so appointed, is hereby authorized to give

Governor to appoint.

copies of all and singular the said papers and records whenever thereunto required, and certify the same under his hand and official seal, for which he shall receive a fee of twenty-five cents for every hundred words, and the person so appointed, before he enters upon the exercise of his office, shall give bond and security, payable to the governor and his successors in office, in the penal sum of five thousand dollars, conditioned for the safe-keeping of the said papers and records, and the faithful discharge of his office, which bond shall be lodged in the office of the secretary of this territory, and may be put in suit by the party or parties injured, in his or their own name, and shall not become void upon the first recovery, but may from time to time be put in suit, by action of debt, until the whole penalty is recovered.

SEC. 2. *And be it further enacted*, That the said keeper and translator of the Spanish records, shall keep his office at Mobile. Keep his office at Mobile.

NOTE.—This act is almost verbatim the same as the act of 1803, already inserted, although they were really intended to provide for the preservation of different Spanish documents.

CHAPTER VI.

Extracts from "An Act to Regulate the Proceedings in the Courts of Law," &c.—*Passed December* 14, 1819.

SEC. 14. *And be it further enacted*, That the clerks of the several circuit courts shall give bond with security, payable to the governor and his successors in office, in the penalty of ten thousand dollars, for the safe-keeping of the records, and the faithful discharge of the duties of his office, which said bond shall be lodged in the office of the secretary of state, and may be put in suit on the assignment of the governor, by the party or parties injured, in his or their own name, and shall not become void upon the first recovery, but may from time to time be put in suit by action of debt, until the whole penalty be recovered; and if it shall be discovered, that any of the said clerks shall have violated the oath prescribed by the constitution, or willingly or corruptly have done any thing contrary to the true intent and meaning of the same, such clerk shall be deemed upon conviction guilty of misbehaviour in office, and shall be removed therefrom, and shall for ever be incapable of holding any office, civil or military, in this state. Clerks to give bond.

SEC. 15. *And be it further enacted*, That the records of the respective courts within this state, for such preceding day of every session, shall be read in open court, on the morning of the succeeding day, except on the last day of the term, on which day they shall be signed by the judge or judges presiding in said court. Records of courts to be read in open court.

CHAPTER VII.

An Act specifying the Causes and Manner of removing Clerks.—*Passed December 17, 1819.*

Causes of removing clerks.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That if any clerk of any court in this state, shall willingly make any false entry, interlineation, or erasure of a letter, or change any record in his keeping belonging to his office, or shall neglect to record any will, deed, or other matter proper to be recorded in his office, within a reasonable time after the same shall have been lodged, in his office to be recorded, or shall neglect to make out and keep a fair and correct index to the matters recorded in each and every book, or shall neglect to keep in regular file all the papers belonging to his office, keeping every subject matter in its proper and peculiar file, and the papers of each suit together, or shall refuse or neglect to make out in a reasonable time after application of any person demanding the same, a transcript of any record in his office, or shall make out the same so erroneously or incorrectly, that the court to which it is taken cannot proceed thereon, or shall refuse or neglect to perform any of the duties required by law, to be performed by such clerk; such clerk shall upon trial and conviction, be deemed guilty of a misbehaviour in office, and shall be subject to a fine not exceeding two hundred dollars, or be removed therefrom by the court, and shall also be liable to an action on the case for damages in behalf of the party aggrieved.

Judges to appoint three persons to inspect records.

SEC. 2. *And be it further enacted,* That it shall be the duty of the judge or judges of the several circuit and county courts in this state, once in every year, to appoint three fit persons, who will undertake the same, to inspect the clerk's office of such court, and to compare the records with the papers filed in the several suits in such court, and report the state of the office of such clerk to the court instanter, or to the next court thereafter, which report shall be entered of record in the court.

Charges, how exhibited and acted on.

SEC. 3. *And be it further enacted,* That all charges against clerks for misbehaviour in office, shall be exhibited to the court in writing, and the court shall direct the facts to be tried by a jury, and on conviction thereof, such clerk shall be fined or removed from office, as the court of which he is clerk shall think proper: *Provided,* that every clerk against whom charges may be exhibited shall be entitled to a copy thereof, and shall be permitted to make his defence on trial.

CHAPTER VIII.

Resolution providing for the Preservation of the State Records.—*Passed December 16, 1820.*

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That in future it shall be the duty of the secretary of state, at or soon after the close of each general assembly, to deposit in his office all the records and papers necessarily belonging to the legislature; which shall be determined by an examination, made by the secretary of state, secretary of the senate, and clerk of the house of representatives, who are hereby appointed commissioners for that purpose.

CHAPTER IX.

An Act to provide for transcribing and transferring certain Records from Mobile to Baldwin County.—*Passed December* 12, 1821.

Clerk of Baldwin to transcribe records from Mobile.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall be lawful for the clerk of the county court for Baldwin county, and he is hereby required to transcribe all the deeds of land lying within the present limits of said county, which have been entered upon the records of Mobile county, and deposite the same in his office in said Baldwin county, as soon as may be after the passage of this act.

Clerks of Mobile and Baldwin to compare records.

SEC. 2. *And be it further enacted,* That when the records shall be copied as aforesaid, it shall be the duty of the clerks of both Baldwin and Mobile counties, to compare said copies with the original records, and jointly certify the correctness of the same, which shall thereafter have the same validity and effect in law and equity as the original records.

Clerk of Baldwin to take from records plat of town of Blakeley.

SEC. 3. *And be it further enacted,* That it shall be lawful for the clerk of the county court of Baldwin county, and he is hereby required, to take from the records of Mobile county the original plat of the town of Blakeley, and transfer the same into the book containing the copies of the records aforesaid, and the said plat so transferred shall thereafter have the same force and effect, in law and equity, as if the same had remained on record in Mobile county.

Fees.

SEC. 4. *And be it further enacted,* That the clerk of the county court of Baldwin county shall be entitled to the same fees for transcribing said records, as are allowed at present for recording deeds; to be paid by the county treasurer of Baldwin county, on the certificate of the judge of the county court; that this act has been complied with by said clerk of Baldwin county, and that his compensation for services rendered is allowed.

CHAPTER X.

An Act in relation to the Spanish Records in the County of Mobile.—*Passed December* 12, 1821.

Commissioners appointed to inquire for certain records.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Samuel H. Garrow, Samuel Acre, and Henry V. Chamberlain, be, and they are hereby appointed commissioners, who, or a majority of whom, having been sworn duly to execute the duties of the office, shall be authorized to make diligent inquiry, as to the disposition of certain Spanish records, which were in the possession of colonel Thomas Powell at the time of his death, and which had been intrusted to his charge as a public officer under this government: and whereas it is represented to this general assembly, that many of the said records have been lost or secreted, the said commissioners, or a majority of them, are hereby authorized to proceed in making search for the same: proper oath having been previously made, to authorize said search, in every instance, as is required by law in the case of goods and chattels, lost and supposed to have been stolen, and to take possession thereof accordingly.

To search as in case of stolen goods.

County court of Mobile to compensate commissioners.

SEC. 2. *And be it further enacted,* That it shall be the duty of said commissioners to make report of their proceedings to the next general assembly, and also to report to the county court of Mobile county, an account of their proceedings, together with the expenses incurred in the discharge of the duties imposed upon them by this act. And the same, after presentation to the said court, shall be paid to them out of the treasury of said county, after allowance by said court; in which allowance shall be included reasonable compensation for the services performed by said commissioners.

CHAPTER XI.

An Act to authorize the Judge of the County Court of Mobile to take possession of the Spanish Records.—*Passed December* 31, 1822.

Judge to have charge of Spanish records.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, it shall be the duty of the county court judge, for the county of Mobile, to take charge of the Spanish records, and keep them under his immediate charge; appointing at the same time a suitable person as translator and clerk for the office, whose duty it shall be, to examine and translate, when required, the records aforesaid.

To appoint a translator.

To correct irregularities in the translation.

SEC. 2. *And be it further enacted,* That it shall be the duty of the judge aforesaid, to correct from time to time, any irregularity he may discover in the management and safe-keeping of the said records, by removing the said translator, should he act improperly in the discharge of the duties of his office.

Translator's fees.

SEC. 3. *And be it further enacted,* That the translator aforesaid shall be entitled to the same fees and emoluments, as are now allowed to the present translator for examining, translating, and performing such duties as belong to his office.

SEC. 4. *And be it further enacted,* That the judge aforesaid shall administer the following oath to the person by him appointed, before he suffers him to enter on the duties of his office: "I, A. B. do solemnly swear, (or affirm, as the case may be,) that I will honestly and truly translate to the best of my ability, when required, the records aforesaid, and that I will, in every particular, discharge the duties imposed upon me by this act, to the best of my knowledge: So help me God."

Oath.

Judge to recover records by process.

SEC. 5. *And be it further enacted*, That the judge of the said county court shall have power, and he is hereby directed, to proceed against any person or persons who may have possession of all, or any of said records, and refuse to deliver them on request to the said judge, for a contempt, and punish him for such contempt, as in other cases of contempt of court.

RENT.—1807.

CHAPTER I.

Extracts from "An Act concerning Executions, and for the Relief of Insolvent Debtors."—*Passed February* 10, 1807.

Leased property, how taken.

SEC. 35. *And be it further enacted*, That no goods or chattels whatsoever, lying or being in, or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years or will, or otherwise, shall at any time hereafter be liable to be taken by virtue of any writ of execution, on any pretence whatsoever, unless the party so taking the same, shall before the removal of the goods from off such premises, pay or tender to the landlord or lessor thereof, or his agent, all money due for the rent of the said premises at the time of taking such goods or chattels in execution: *Provided nevertheless*, That such rent arrears do not amount to more than one year's rent, and if more be due than the party suing out such execution, paying or tendering to such landlord, or his agent, one year's rent, may proceed to execute his judgment, and the sheriff or officer levying the same, is hereby empowered and required to levy and pay to the plaintiff, as well the money so paid for the rent, as the execution money.

CHAPTER II.

An Act to provide for the Recovery of Rent in certain Cases, not heretofore provided for.—*Passed December* 11, 1812.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That from and after the passage of this act, it shall and may be lawful for any person or persons, to whom any rent may be now due, or hereafter may become due, or the executor or administrator of such person, when the demise is not by deed, or if by deed, not specifying the rent to be paid, to recover a reasonable satisfaction for the tenements occupied by the defendant in an action on the case, for the use and occupancy of what was held or enjoyed, and if on evidence on the trial of such action, any parol demise, reserving certain rent, or a demise by deed, but no rent therein agreed on, in either case, the plaintiff in such action shall not be nonsuited, but shall recover a reasonable satisfaction for the tenements occupied.

SEC. 2. *And be it further enacted*, That the common law method of distress for rent, be, and the same is hereby abolished.

CHAPTER III.

An Act respecting Rents —*Passed December* 12, 1821.

Crop not to be taken by execution until lessor be paid.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the crop grown on any rented land in this state shall not be liable to be taken by virtue of any execution, or removed off the premises of any such rented land, unless the party so taking the same, shall, before the removal of the crop from off such premises, pay, or tender to the landlord or lessor thereof, or his agent, all money due for the rent of the said premises at the time of taking such crop in execution: *Provided nevertheless*, That such rent, or arrears, do not amount to more than one year's rent, and if more be due, then the party suing out such execution, paying or tendering to such landlord, or his agent, one year's rent, may proceed to execute his judgment, and the sheriff or officer levying the same, is hereby empowered and required to levy and pay to the plaintiff, as well the money so paid for the rent, as the execution money.

Proviso.

Repeal.

SEC. 2. *And be it further enacted*, That all laws on the subject of rents, heretofore in force in this state, so far as the same may conflict with the provisions of this act, be, and the same are hereby repealed.

RIVERS AND CREEKS.—1808.

CHAPTER I.

Extracts from "An Act supplementary to an Act concerning Public Roads, and for other purposes."—*Passed March* 1, 1808.

County courts may contract to open navigable streams.

SEC. 3. *And be it further enacted*, That the county courts of the respective counties in this territory, are hereby authorized, whenever in their opinion it may be deemed necessary and proper, to open any navigable stream in the said county, to contract with one or more persons for opening the same, by giving at least forty days notice at the court-house of said county, previous to making such contract, which shall in every case be let to the lowest bidder for the same.

County courts to take security from persons contracting.

SEC. 4. *And be it further enacted*, That it shall be the duty of said county courts, to take bond and security of the person or persons with whom they may contract for the opening any navigable stream, as may be contemplated by the preceding section, and upon the fulfilment and execution of the said contract, they are hereby authorized to draw on the territorial treasury, in favour of the person or persons with whom they have contracted as aforesaid, for any sum not exceeding one-tenth part of the revenue of said county: *And provided*, the sum shall be paid out of any money set apart in the treasury for county purposes.

CHAPTER II.

An Act concerning Navigable Streams within this Territory.—*Passed November* 27, 1810.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the clearing and opening of all streams, which have been declared by law to be navigable, or which may by any county court within this territory be declared navigable, shall be placed under the control of the county court of the county through which the same may pass; and the said county courts are hereby vested with power, at their discretion, to appoint overseers to clear out the same, and apportion the hands to work thereon, in the same manner, and under the same regulations, in every respect, that overseers and hands appointed to work on public roads are placed by law.

CHAPTER III.

An Act concerning Indian Creek in Madison County.*—*Passed December* 16, 1811.

CHAPTER IV.

An Act to prevent Obstructions in the Navigable Waters in this Territory.—*Passed December* 1, 1814.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That it shall not be lawful for any master of a vessel, or other person, to obstruct, or cause to be obstructed, any of the channels or passes, in any of the navigable bays, rivers, or creeks in this territory, by throwing or putting, or causing to be thrown or put, any ballast, tree, or other impediments, into the said channels or passes, or in any other manner whatever obstruct the free navigation thereof; and the person or persons so offending, shall be fined in a sum not less than fifty dollars, nor more than two hundred, to be assessed by a jury.

Obstructions of navigable waters prohibited.

Fine for obstructing.

SEC. 2. *And be it further enacted*, That it shall be the duty of any justice of the peace, or of the quorum, upon his own knowledge, or upon proper information, to issue his warrant to

Justices to apprehend and recognize offenders.

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* The object of this Act is to prevent the water of Indian Creek, which is frequently used for drinking and other purposes, from being contaminated, by casting therein dead animals, or any kind of filth. It will be found under Title "Public Health," Chapter 3.

apprehend any person so offending, and upon his appearance, to bind him in a sufficient recognizance to appear at the next superior court to be holden for the county in which the offence may have been committed, to answer an indictment to be preferred against him. It shall moreover be the duty of the grand jury to take notice of offences arising under this act.

CHAPTER V.

An Act to prevent the Obstruction of the Navigable Water-courses in this State.—*Passed December*, 1819.

Navigable water-courses to remain free and open.

SEC. 3. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all water-courses reported to be navigable, or which may hereafter be reported to be navigable by the surveyor of the United States, employed in surveying lands in this state, shall be and remain free and open.

Fish dams not to obstruct the navigation.

SEC. 5. *And be it further enacted*, That if any person or persons have heretofore erected, or shall hereafter erect any fish-dam on any such water-courses, he or they shall open in the deepest channel of said water-courses, where any such dam is, or may be erected, one-third of said water-course, including the main channel thereof.

Penalty for non-compliance with this act.

SEC. 3. *And be it further enacted*, That in case any person or persons shall fail to comply with the provisions of the second section of this act, he shall forfeit and pay for every such offence, the sum of twenty dollars, to be recovered before any justice of the peace; one half thereof to the use of the person who will sue for the same, the other half to the county where such offence shall be committed.

No person to fell trees into water-courses, &c.

SEC. 4. *And be it further enacted*, That if any person or persons shall, after this act takes effect, make any hedges, or cut, or cause to be cut, any tree or trees to fall in said navigable water-courses, he shall forfeit and pay for every such offence, the sum of ten dollars for every day such hedge or tree shall so remain in said water-course, recoverable before any justice of the peace; one half thereof to the use of the person who will sue for the same, and the other half to the use of the county where such offence shall be committed.

When to take effect.

SEC. 5. *And be it further enacted*, That this act shall be in force from and after the first day of March next.

CHAPTER VI.

An Act to provide for Examining certain Rivers therein named, and for other purposes.—*Passed December* 13, 1819.

Governor authorized to employ engineer and assistants to

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the governor of this state be, and he is hereby authorized to employ one skilful engineer, and as many assistants as he may explore certain rivers.

deem necessary, whose duty it shall be, under such instructions and regulations as to him may appear proper, to examine from the falls of the Coosa river to Will's creek; from M'Grew's shoals on the Tombeckbee, to the falls of the Warrior; from the junction of the Tombeckbee with the Black Warrior, to the state line, and that from the point where the state line may cross the Buttahatchee, up the same to the military crossing thereof; from the head of the Muscle shoals, to the lower end of Culbert's shoals on the Tennessee; and from Culbert's shoals to where the Alabama state line crosses the Tennessee river, below said shoals; from the town of Cahawba to the falls of that river; from the falls of the Warrior to the Mulberry Fork; and the nearest and best roads from the Tennessee to each of those points; from the junction of the Alabama with the Tallipoosa, to Line creek; and to report to him as soon as practicable, for the information of the general assembly, to what extent, in what manner, and at what expense, the navigation of each may be improved; and also to examine the country between the waters of the Mobile and Tennessee rivers, and to report to him the nearest and most eligible approaches which can be made between the same, and at what expenses, for facilitating the commercial intercourse of this state.

Four thousand dollars appropriated to carry this act into effect.

SEC. 2. *And be it further enacted*, That for carrying this act into effect, there shall be, and hereby is appropriated a sum not exceeding four thousand dollars, to be paid out of any moneys arising from the fund appropriated by congress, for the purpose of internal improvement within this state.

CHAPTER VII.

An Act to provide for the appointing of Pilots to pilot boats through the Muscle Shoals of Tennessee River.—*Passed December* 13, 1819.

County court of Lawrence to appoint pilots.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the county court of the county of Lawrence are hereby directed and empowered to license such number of pilots for the piloting of boats through the above named shoals, as the court may deem necessary, not exceeding six in number: *Provided*, that no person shall receive said appointment until he produces to said court evidence of his qualifications and correct knowledge of the boat channel through said shoals.

Pilots to give bond.

SEC. 2. *And be it further enacted*, That each and every person appointed by virtue of this act, shall give bond with security, to be approved by the chief justice of the county court of Lawrence county, in the sum of six thousand dollars, for the true and faithful performance of his duty, and correctly conducting every boat (as pilot) committed to his charge, which bond shall be made payable to the chief justice of the county court, for the benefit of any person or persons, who may sustain an injury by said pilot's neglect, inattention, or misconduct, to be applied to the benefit of the person or persons, for what damage they may have sustained: *Provided*, that no license shall be granted for a longer term than one year at any time.

Fees of pilot.

Sec. 3. *And be it further enacted*, That each and every pilot appointed and licensed by virtue of this act, shall receive for each and every boat so piloted the sum of ten dollars, from the owner or master of said boat, and no pilot shall be compelled to go on board of any boat, above the town of Marathon, or conduct the same below the town of Bainbridge.

Pilot not liable in certain cases.

Sec. 4. *And be it further enacted*, That no pilot shall be subjected to any damages, on account of an injury done to a boat, in consequence of the dangers of the river by high winds or mismanagement of the bow hands, or for obeying the directions of the master or owner of the boat.

CHAPTER VIII.

An Act to Incorporate the Cahawba Navigation Company.—*Passed December 7, 1820.*

Commissioners.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That Edwin D. King, Joel L. Jones, James L. Baird, Thomas Read, John Durden, and Temple Lee, and such persons as shall be associated with them, are hereby declared a body corporate, under the name and style of "The Cahawba Navigation Company," who shall be authorized to receive subscriptions and donations, and apply the same in such manner as they shall direct, to the improvement of the navigation of Cahawba river, from the town of Cahawba to the falls of the river of the same name.

Receive donations—how applied.

Obstructions prevented.

Sec. 2. *And be it further enacted*, That if any person or persons shall cut or fell a tree into said river, and shall not immediately remove the same, or shall otherwise obstruct the navigation of said river, shall, for every such offence, forfeit and pay the sum of five dollars, for every day the same is thus obstructed, to be recovered before any court having jurisdiction of the same, in the name of said company, and to be applied to the improvement of the navigation of said river: *Provided nevertheless*, that nothing in this act shall be construed so as to prevent the state of Alabama from making any improvement in the navigation of the same in any manner, and at any time they may think proper: *And provided also*, that nothing contained in this act shall be so construed as to prevent any other company from improving the navigation of said river from the mouth to the falls of the same.

State may improve.

CHAPTER IX.

An Act authorizing a Review of Flint River, in Cotaco County.—*Passed December 6, 1820.*

Commissioners.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That David Parker, Jonathan Burlison, and John Birdwell, or any two of them, be, and they are hereby authorized, carefully to review Flint river in Cotaco county, from its junction with the Tennessee river, to the main fork therein, and report the practicability of its navigation, and the distance by them reviewed, to the next general assembly.

SEC. 2. *And be it further enacted,* That if in the opinion of the commissioners, it is practicable to navigate the eastern or western branches of Flint river above the forks, it shall be their duty to report the same to the next general assembly, and the expenses that they may think necessary to open the same. Make report.

CHAPTER X.

An Act declaring the Oaktuppa Creek a Navigable Stream, &c.—*Passed December 6, 1820.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the creek called Oaktuppa, situated in Washington county, and emptying into the Tombeckbee river, be, and the same is hereby declared a navigable stream, from the mouth thereof up to Phillip's mill.

CHAPTER XI.

An Act authorizing a Lottery for the Benefit of the Navigation of the Buttahatchee River.—*Passed December 18, 1820.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall and may be lawful for Anthony Winston, William Wilson, Jesse Vanhoose, James Davis, Robert Gillespie, Isaac Anderson, James Moore, William Metcalf, Jabez Fitzgerald, Lemuel Bean, J. S. Fulton, Richard Ellis, and John D. Terrell, or a majority of them, who may take upon them the duties enjoined by this act, to raise by lottery in one or more classes as to them may seem necessary, any sum not exceeding thirty thousand dollars, to be appropriated exclusively to the navigation of the said Buttahatchee River: *Provided always,* That the navigation of said river shall in nowise affect private property, without just compensation being made therefor, which compensation shall always be ascertained by a jury, according to the existing laws regulating the erection of mill-dams. Commissioners. Lottery authorized. Not to injure private property.

SEC. 2. *And be it further enacted,* That the said Anthony Winston, William Wilson, Jesse Vanhoose, James Davis, Robert Gillespie, Isaac Anderson, James Moore, William Metcalf, Jabez Fitzgerald, Lemuel Bean, J. S. Fulton, Richard Ellis, and John D. Terrell, or such majority of them as may choose to serve, shall, before they enter upon the duties to them assigned in this act, enter into bond with sufficient security, payable to the governor for the time being, or his successors in office, before some one of the judges of the circuit court Commissioners to give bond.

of this state, conditioned for the faithful performance of all the duties of them required by this act: which bond, by the judge taking the same, shall be placed in the clerk's office of the circuit court for Marion or Franklin county in this state, and may be put in suit in the name of the governor of the state of Alabama, for the time being, by any person or persons who may be injured by a breach of any of the provisions of this act.

Prizes to be paid in ninety days.

SEC. 3. *And be it further enacted*, That it shall be the duty of the said persons, or such of them as may choose to act under this law, within ninety days after the completion of the drawing of the lottery aforesaid, to pay to the fortunate drawers in said lottery, or to his, her, or their legal representatives, such prize as may be due agreeably to the scheme they may have determined upon and published.

Lottery, where to be drawn.

SEC. 4. *And be it further enacted*, That the said lottery shall be drawn at Franklin court-house or Marion court-house in this state, as may be agreed on by the acting managers aforesaid, who shall in some printed newspaper within the state, give due notice of the time and place of such drawing; which shall be conducted in such manner, and under such regulations and responsibilities as to the aforesaid persons may seem most expedient: *Provided*, That each clerk or other person concerned in the drawing of said lottery, shall take an oath before some justice of the peace, faithfully and impartially to discharge their respective duties.

Managers to take an oath.

Lottery to be drawn in four years.

SEC. 5. *And be it further enacted*, That should the said lottery, or any class thereof, not be drawn within four years after the scheme thereof shall have been published, the same shall cease, and the purchasers of tickets may demand and recover of the managers, named in the first section of this act, any money disbursed for tickets in said lottery.

SEC. 6. *And be it further enacted*, That within a convenient and reasonable time after the lottery shall have been drawn, the commissioners acting under this act, shall give public notice in some newspaper, that the navigation of the said river Buttahatchee at a certain place will be let to the lowest bidder, which lowest bidder shall be the undertaker of the said river: *Provided*, he shall give to the said managers good and sufficient security, to their satisfaction, for the faithful performance of his undertaking. And the said managers shall be authorized to make to the said undertaker such disbursements, and at such times, as they may think proper.

CHAPTER XII.

An Act to prevent obstructing or diverting from the Natural Channel any Water-course which would otherwise flow through the Land of any person.—*Passed December* 18, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passing of this act, it shall not be lawful for any person or persons, under any pretence whatever, to obstruct or divert any stream of water from its natural channel, which would otherwise flow through the land of any other person.

SEC. 2. *And be it further enacted*, That if any person shall violate the provisions of this act, he shall be liable to the action of the party aggrieved thereby.

CHAPTER XIII.

An Act declaring that part of Limestone leading from Mooresville to the Tennessee river, a Public Highway, and for other purposes.—*Passed December 14, 1820.*

Limestone declared navigable.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the stream running from Mooresville into the Tennessee river, is hereby declared a public highway.

Penalty for obstructing navigation.

SEC. 2. *And be it further enacted*, That if any person or persons, shall in any wise obstruct, by cutting or felling any tree or trees (without immediately removing the same) within the said stream, or in any wise obstruct the navigation thereof, such person or persons shall forfeit and pay the sum of five dollars for every such offence, and the further sum of three dollars for every day the same may be suffered to remain in said stream, to be recovered in any court having cognizance thereof, one half to the person suing for the same, and the other half to the county.

Flint and Paint Rock rivers declared highways.

SEC. 3. *And be it further enacted*, That Flint river, in Madison county, from its confluence with the Tennessee river, up the same to the first mill, commonly called Brown's, or Scott's mills, and the river Paint-rock, in Jackson county, from its confluence with the Tennessee to Fletcher's mill, be, and they are hereby declared to be public highways; and any person obstructing the same or either of them, between the points herein mentioned and declared public highways, by felling trees, logs, or otherwise, shall be liable to all the pains and penalties, and recoverable in the same manner as are prescribed in the second section of this act.

CHAPTER XIV.

An Act to Incorporate the Flint River Navigation Company.—*Passed December 20, 1820.*

Members of corporation.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That Fleming Jordon, George Taylor, James M'Cartney, John Sprowl, Stephen Pond, John P. Brown, John Grayson, Dial Perry, David Walker, Ebenezer Byram, Stephen M'Broom, William Derrick, and David Cobb, and such other persons as shall be associated with them, are hereby constituted and declared a body corporate, under the name and style of "The Flint River Navigation Company," who shall be authorized to receive subscriptions and donations, and apply the same in such manner as they shall direct, to the improvement of the navigation of Flint river, in Madison county, from captain Scott's mills to the Tennessee river.

Penalty for obstructing navigation.

SEC. 2. *And be it further enacted*, That if any person or persons shall cut, or fell a tree into said river, and shall not remove the same, or shall otherwise obstruct the navigation of the said river, shall for every such offence forfeit and pay the sum of three dollars for every day the same is thus obstructed; to be recovered before any court having jurisdiction of the case, in the name of said company, and applied to the improvement of the navigation of said river.

CHAPTER XV.

An Act to Incorporate the Indian Creek Navigation Company.—*Passed December* 21, 1820.

Commissioners.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That Leroy Pope, Thomas Fearne, Stephen S. Ewing, Henry Cook, and Samuel Hazard, be, and they are hereby appointed commissioners, with power to open books at the town of Huntsville, and at such other place or places as they may think proper, to receive subscriptions of stock in the Indian Creek Navigation Company, in shares of fifty dollars each.

Corporate powers.

SEC. 2. *And be it further enacted*, That said subscribers shall be, and they are hereby created a body corporate and politic, by the name and style of the "Indian Creek Navigation Company," with power to sue and be sued, plead and be impleaded, in any court of record in this state, to have a common seal, and the same to break, alter, and renew at pleasure, and also ordain, establish, and put in execution such by-laws, ordinances, and regulations, as they shall deem necessary and convenient, for the government of said corporation, not being contrary to the constitution thereof, or the laws of the United States or this state, and generally to do and execute all and singular the acts, matters, and things which to them may appear necessary, or which to them it shall or may appertain to, as incident to corporate bodies, subject nevertheless to the rules, regulations, and restrictions herein after presented and described, and to purchase, hold, and dispose of, for the benefit of said corporation, real, personal, and mixed estate, not exceeding double the amount of stock subscribed.

Election of directors.

SEC. 3. *And be it further enacted*, That for the management of the affairs of said corporation, there shall be elected five directors annually in the town of Huntsville, on the first Monday in May, in each year, by the stockholders; and the directors thus elected shall serve for one year, and the board of directors annually, at the first meeting after their election, shall proceed to elect one of the directors to be president of the corporation, who shall hold the said office during the same period for which the directors are elected as aforesaid: *Provided always*, That the first election of the directors and president of said corporation shall be at the time and for the period hereafter declared: *And provided also*, That in case it shall at any time happen that an election of directors, or an election of president of said company, should not be made so as to take effect, on any day when in pursuance of this act they ought to take effect, the said corporation shall not for that cause be deemed to be dissolved, but it shall be lawful at any other time to hold such election; and the manner of holding the election shall be regulated by the laws and ordinances of said corporation, and until such election be held, the president and directors of the company shall continue in office: *And provided also*, That in case of the death, resignation, or removal of the president of said corporation, or of his absence from this state for more than six months, the directors shall proceed to elect another president from the directors as aforesaid; and in case of the death, resignation, removal from office, or absence of a director, the vacancy may be supplied by a majority of the board. **Proviso.**

SEC. 4. *And be it further enacted*, That as soon as the sum of ten thousand dollars shall be subscribed, notice thereof shall be given by the commissioners, in some newspaper published in the town of Huntsville; and the said commissioners shall at the same time, and in like manner, notify a time and place in the said town of Huntsville, at the distance of fifteen days from the time of such notification, for proceeding to the election of five directors as aforesaid, and the election then and there made shall be lawful, and the persons who shall be elected as aforesaid, shall be the first directors of said company, and shall proceed to elect one of the directors to be president, and the president and directors so elected shall be capable of serving in their respective offices by virtue thereof, until the end and expiration of the first day of May next ensuing said election, and they shall then and thenceforth commence and continue the operations of said company. **Commissioners to give notice.**

SEC. 5. *And be it further enacted*, That the directors for the time being shall have power to employ such officers and servants under them, as shall be necessary for the executing the business of said corporation, and allow them such compensation as may be prescribed and determined by the laws, regulations, and ordinances of the same. None but a stockholder, a resident citizen of the state, shall be a director; and the directors shall receive such compensation for their services as the stockholders at a general meeting shall assign them; not less than three directors shall constitute a board to do business, of whom the president shall always be one, except in cases of sickness, or necessary absence, in which case his place may be supplied by another director, whom he may by writing, under his hand, depute for that purpose; and the director so deputed may do and transact all the necessary businesss belonging to the office of the president of said corporation, during the continuance of the sickness or necessary absence of the president. **Compensation.**

Officers to give bond.

SEC. 6. *And be it further enacted,* That it shall be lawful for the directors to call a general meeting of the stockholders, at any time they may deem it necessary and expedient, and a number of stockholders, not less than five, who together shall be proprietors of fifty shares or upwards, shall have power at any time to call a general meeting of the stockholders for purposes relative to the institution, giving at least four weeks notice in a newspaper published in Huntsville, and specifying in such notice the objects of such meetings; the officers of the corporation shall previously to entering on the duties of their respective offices, give bond with such security and in such form as the directors shall require, conditioned for the faithful discharge of their duties respectively.

SEC. 7. *And be it further enacted,* That said corporation shall have power and authority to open and improve the navigation of Indian creek, in Madison county, from the spring at Huntsville to the town of Triana, at the mouth of said creek, by removing the obstructions therein, opening canal or canals, or in such other mode or way as they may deem expedient: *Provided,* that no such improvement shall be made on the property of others without the written consent of the owner or owners obtained for that purpose.

Writ *ad quod damnum.*

SEC. 8. *And be it further enacted.* That if said corporation cannot obtain the consent of the owner or owners of land, through which said improvements may be necessary, it shall be lawful for said corporation to apply for and obtain a writ of *ad quod damnum,* as in other cases, to the sheriff of Madison county, whose duty it shall be to summon a jury of twelve freeholders in said county, and cause an inquest to be taken of the value of so much land, as said corporation may require to be condemned for the purposes aforesaid, and all other damages which the owner thereof may sustain, which inquest shall be returned to the county court of said county at the next succeeding term, and the clerk of said court shall, at the request of the president of said corporation, issue a summons or summonses directed to said sheriff, directing him to summon the proprietor or proprietors of said land condemned as aforesaid, to show cause why judgment should not be rendered by said county court, vesting the title of said land condemned as aforesaid in said corporation.

Court to give judgment.

SEC. 9. *And be it further enacted,* That the said county court shall have power to confirm the inquisition of said jury, or quash the same for good cause shown, and if confirmed, to vest the fee simple in said land, in the said president, directors, and company, and their successors, upon the payment of the amount or value of said land assessed by said jury as aforesaid.

Appeal.

SEC. 10. *And be it further enacted,* That if either party shall consider themselves aggrieved by the judgment of said court, they shall have the right to pray an appeal to the next term of the supreme court, which shall be granted by said county court, upon the party praying the appeal entering into bond and security, to be approved by said court, to prosecute such appeal with effect.

SEC. 11. *And be it further enacted,* That whenever said creek shall be rendered navigable for boats drawing ten inches of water, and so long as said creek shall be keep thus navigable, it shall be lawful for said corporation to demand and receive toll on all boats navigating the same between said town of Huntsville and Triana, at the following rates: two dollars for every ton freight which said boat carries, provided that toll shall not be collected on boats running between Prout's mill and Triana. Rates of toll.

SEC. 12. *And be it further enacted,* That if any person shall obstruct said navigation by felling trees in said creek or otherwise, he, she, or they so offending, shall forfeit and pay to said corporation double the amount of the damages which may be assessed by a jury, in any court of record having jurisdiction thereof.

CHAPTER XVI.

An Act to authorize William Crawford and Company, of Franklin County, to build a Mill and other Water-Works on the Tennessee River, and for other purposes.—*Passed December* 3, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That William Crawford and Company of Franklin county be, and they are hereby authorized, to build a mill and any other water-works on the Tennessee river, opposite and adjoining to fractional section number seventeen in township number three, range number ten, west of the basis meridian, in the district of lands sold at Huntsville. May build mill, &c.

SEC. 2. *And be it further enacted,* That the said William Crawford and Company are hereby authorized to extend the dams of the said mill and other water-works, up the said river, and opposite to fractional section number seventeen, in said township and range. May extend dam.

SEC. 3. *And be it further enacted,* That the said mill-dam and water-works, shall be so constructed, as in nowise to impede the free passage and navigation of the said Tennessee, for all kinds of vessels, or water crafts, under the penalty of having the same removed as a nuisance, by order of any court having competent jurisdiction thereof; and the said William Crawford and Company, their heirs, representatives, and assigns, shall be liable to be sued for all damages arising from any obstruction of the navigation of said river, by the erection of the aforesaid mill or other water-works. Penalty for obstructing navigation.

SEC. 4. *And be it further enacted,* That the act passed on the twelfth day of June, one thousand eight hundred and twenty-one, to authorize Malcom Gilchrist of Lawrence county, to build a mill and other water-works on the Muscle Shoals, be, and the same is hereby repealed. Repeal.

SEC. 5. *And be it further enacted,* That the said Malcom Gilchrist be, and he is hereby authorized to build a mill and any other water-works on the Muscle Shoals on the Tennessee Gilchrist may build mill, &c.

river, opposite and adjoining to fractional section number twenty-six, in township number three, range number seven, west of the basis meridian, in the district of lands sold at Huntsville.

SEC. 6. *And be it further enacted*, That the said Malcom Gilchrist is hereby authorized to extend the dams of the said mill and other water-works, up the said river, and opposite to fractional section number twenty-five, in said township and range.

Navigation of river not to be obstructed.

SEC. 7. *And be it further enacted*, That the said mill-dam and water-works shall be so constructed, as in nowise to impede the free passage and navigation of the said river, for all kinds of vessels, or water crafts, under the penalty of having the same removed as a nuisance, by order of any court having competent jurisdiction thereof; and the said Malcom Gilchrist, his heirs, representatives, and assigns, shall be liable to be sued for all damages arising from any obstruction of the navigation of said river, by the erection of said mill or other water-works.

CHAPTER XVII.

An Act appointing Commissioners to lay out a certain Road therein designated. *Passed December* 3, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That Samuel Mardies, Edward Sims, Jonathan Music, Hansel M'Kenny, Thomas Williams, and James Drennin be, and they are hereby appointed commissioners, who, or a majority of whom, are hereby authorized to lay out and mark the nearest and best way for a road to be opened, beginning at such point as they may deem proper, on the road leading from Huntsville to Tuskaloosa, and running from thence to or near Fort Williams on the Coosa river, in such manner as to shorten the distance to the settlements in Georgia: *Provided nevertheless*, that the said commissioners shall not be entitled to receive compensation for their services from the state of Alabama.

Commissioners appointed.

Routs of road.

Proviso. Commissioners not to receive pay.

CHAPTER XVIII.

An Act to allow compensation to William Dunn for examining the Black Warrior River, above the town of Tuskaloosa.—*Passed December* 3, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the sum of one hundred and twenty dollars is hereby allowed to William Dunn, for his services and expenses in examining the Black Warrior river, above the town of Tuskaloosa, and that the treasurer of the state is hereby directed to pay the aforesaid sum to the said William Dunn, out of any money in the treasury not otherwise appropriated.

CHAPTER XIX.

An Act declaring the Mulberry Fork of Tuskaloosa River navigable from its junction with the Sipsy Fork to Baltimore.—*Passed December* 3, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the Mulberry fork of the Tuskaloosa river from Baltimore, to its junction with the Sipsy fork, be, and the same is hereby declared a public highway.

SEC. 2. *And be it further enacted by the authority aforesaid,* That if any person or persons shall create a dam across said river, or fell trees in it, or otherwise obstruct the navigation thereof, shall be liable by law to all the pains and penalties in such cases made and provided.

CHAPTER XX.

An Act to Incorporate the Murder Creek Navigation Company.—*Passed December* 15, 1821.

Subscription books to be opened.

Superintendents.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That subscription books shall be opened at the town of Sparta, on the first day of January next, or as soon thereafter as convenient, under the superintendence of Henry Hunter, R. W. Carter, Mabry Thomas, Francis Boykin, John Dean, and Eldridge S. Greening, for the purpose of receiving subscriptions, to be applied as herein after mentioned, and the said books shall be kept open until the first day of May next ensuing: *Provided* the sum of six thousand dollars shall not be sooner subscribed.

Sum to be raised, divided into shares, how paid.

Stockholders not paying instalments, forfeiture created.

When created, a corporate body.

Style.

Powers.

SEC. 2. *And be it further enacted,* That the said sum of six thousand dollars shall be divided into one hundred and twenty shares, of fifty dollars each, and the money thus subscribed shall be paid, one-eighth part thereof at the time of subscribing; three-eights when the president and directors shall declare that half the distance from the bridge to the mouth of said creek is navigable; and the remainder shall be divided into two equal instalments, one of which shall be paid when the said creek shall have been accepted as a navigable one, and the other instalment four months thereafter: *Provided,* That if any stockholder shall neglect and refuse to pay any instalment that may be due from him, he shall forfeit, to the benefit of the company, whatever sum he may have already paid: and so soon as the sum of six thousand dollars as aforesaid, shall be subscribed, the subscribers, their successors and assigns, shall be a body politic, by the name and style of "The President and Directors of the Murder Creek Navigation Company," and shall by that name be capable and liable in law, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any suit, matter, action, or thing, depending in any court of law or equity.

Directors to be elected.

SEC. 3. *And be it further enacted*, That so soon as the said sum of six thousand dollars shall be subscribed, the superintendents shall give thirty days notice of the time and place of holding an election for the purpose of electing seven directors, which election shall be held under the direction of any three of the superintendents, who shall be on oath to conduct such election fairly and impartially, and the stockholders shall be entitled to vote upon the following principle, to wit: for each and every share, one vote: *Provided*, no person, copartnership, or body politic, shall be entitled to more than five votes, and the directors so elected, shall continue in office for the space of one year.

Term of service.

Majority to transact business.

SEC. 4. *And be it further enacted*, That the said directors, a majority of whom shall be deemed sufficient to transact all business, shall immediately proceed to the election of a president, who shall be elected from their own body, and who shall continue in office for the term of one year.

To appoint treasurer.

SEC. 5. *And be it further enacted*, That the said president and directors shall appoint a treasurer, who shall continue in office for the term of one year, and who shall, previously to his entrance upon the discharge of the duties of his office, give bond and security to the president and directors, in the sum of two thousand dollars, for the faithful performance of the duties of his office, and who shall receive as compensation for his services, one and a half per cent. out of all moneys which may come into his hands as treasurer.

To give bond.

His compensation.

President to give notice of letting out work.

SEC. 6. *And be it further enacted*, That so soon as the officer pointed out by this act, shall have been elected, it shall be the duty of the president to give sixty days notice, at three of the most public places in the county of Conecuh, and in some newspaper, of the time and place of disposing of the said work, which shall be disposed of to the lowest bidder; and the person who shall contract to make the said creek navigable, shall be required to give bond and security, in the sum of four thousand dollars, for the faithful performance of his contract, within such time as the president and directors may prescribe.

May make by-laws.

SEC. 7. *And be it further enacted*, That the president and directors shall pass such by-laws, as they may deem necessary, for the purpose of carrying this act into complete effect, and the said creek shall be made navigable, in such manner and under such regulations as the board may direct.

May erect toll gate.

SEC. 8. *And be it further enacted*, That the said board may erect on such part of the said creek, as they may deem necessary, a toll-gate, and shall receive the following rate, to wit: for every ton, two dollars; for every smaller water-craft of any description, fifty cents.

SEC. 9. *And be it further enacted*, That the said company shall have the exclusive benefit arising from the navigation of the said stream, for, and during the term of twenty years.

Persons obstructing liable.

SEC. 10. *And be it further enacted*, That if any person shall in any manner, obstruct the navigation of the said stream, by felling trees or otherwise, such offender shall be fined in the sum of five dollars, which fine shall be recoverable before any justice of the peace, and shall go exclusively to the benefit of the informer.

NOTE.—Laws with regard to Steam Boats will be found under Title "Highways, Ferries, &c." and Title, "Trade and Commerce."

CHAPTER XXI.

Extracts from "An Act, declaring the Conecuh and Sepulgah Rivers Public Highways, and for other purposes"—*Passed December* 7. 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, the Conecuh river, from the falls thereof in Henry county to the Florida line, and the Sepulgah from its falls near the mouth of Bottle-creek, to its junction with Conecuh river, be, and the same are hereby declared to be public highways.

SHERIFFS AND CORONERS.—1807.

CHAPTER I.

An Act respecting Sheriffs and Coroners.—*Passed February* 10, 1807.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That every sheriff who may be appointed within this territory, shall take the oaths of allegiance to the United States, and of office, and shall give bond with two sufficient sureties, in the penal sum of four thousand dollars, for the faithful discharge of the duties of his office.

The duties of a sheriff shall be, to keep the peace, by causing all offenders against law, in his view, to enter into recognizances, with sureties for keeping the peace, and appearing at the next circuit or superior court, to be holden in the same county, and to commit, in case of refusal. Which recognizances shall, by the said sheriff, be returned and certified before the said court. It shall also be his duty to quell and suppress all affrays, routs, riots, and insurrections: for which end he shall be, and is hereby empowered, to call to his aid the power of the county. He shall pursue, apprehend, and commit to jail, all felons and traitors: he shall execute all warrants, writs, and other process, which by law shall appertain to the duties of his office, and which shall be directed to him by legal authority. He shall duly attend upon all the courts of record, at their respective terms, or sessions, in his county.

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* This act was passed in its present shape in 1807. The first and second sections make a part of a law enacted by the governor and judges in February, 1799. The rest of the act seems to have been borrowed from the English statutes.

Coroners.

Sec. 2. *And be it further enacted*, That every coroner, who may be appointed within this territory, shall be sworn to a faithful discharge of his office, and shall give bond in the sum of two thousand dollars, with two sureties, for the due performance of the same, before he enters upon the duties thereof.

And it shall be the duty of the coroner, by a jury of the county, to inquire concerning the death of a person slain, who dies suddenly, or in prison: and his inquisition so taken, he shall certify to the next circuit or superior court, holden within the county.

And it shall be the duty of the coroner to execute process of every kind, wherein the sheriff is a party, or interested in the suit; or for other just cause, is by law rendered incapable to execute the same.

And in case the sheriff, for any cause, shall be committed to jail, the coroner shall by himself, or such person as he shall appoint, be keeper of the jail during the time the sheriff shall remain a prisoner.

Sec. 3. *And be it further enacted*, That the coroner, upon information, shall go to the places where any be slain, or suddenly dead, or wounded, and shall forthwith command four freeholders, or housekeepers of the county, or five or six, to appear before him in such a place; and when they are come thither, the coroner, upon the oath of them, shall inquire in this manner, that is, to wit: if they know where the person was slain; whether it was in any house, field, bed, tavern, or company, and who were there? Likewise it is to be inquired who were culpable, either of the act, or of the force; and who were present, either men or women; and of whatever age soever they be, (if they can speak or have any discretion) and how many soever be found culpable by inquisition, in any of the manners aforesaid, they shall be taken and delivered to the sheriff, and shall be committed to the jail, until the next court having jurisdiction of the offence. If it happen that any such be slain, who is found in the fields, or in the woods, first, it is to be inquired, whether he were slain in the same place or not, and if he were brought and laid there, they shall do as much as they can to follow their steps that brought the body thither, whether he were brought upon a horse or in a cart; it shall be inquired also, if the dead person were known, or else a stranger, and where he lay the night before: and immediately upon these things being inquired, the bodies of such persons being dead or slain, shall be buried. In like manner it is to be inquired of them that be drowned or suddenly dead: and after such bodies are to be seen, whether they were so drowned, or slain, or strangled by the sign of a cord tied straight about their necks, or about any of their members, or upon any other hurt found upon their bodies, whereupon they shall proceed in the form above said: and if they were not slain, then ought the coroner to attach the finders and all others in company: also all wounds ought to be viewed; the length, breadth, and deepness; and with what weapons, and in what part of the body, the wound or hurt, and how many be culpable, and how many wounds there be, and who gave the wounds? All such things must be enrolled in the rolls of the coroners. It shall moreover, be the duty of the coroner to inquire of the death of all persons whatsoever, who die in prison, to the end that it may appear, whether such persons came to their end by the common course of nature, or by some unlawful violence or unreasonable hardships put on them by those under whose power they were confined.*

SEC. 4. *And be it further enacted,* That every coroner, upon any inquisition before him found, whereby any person or persons shall be indicted for murder or manslaughter, or as accessary or accessaries to the same, before the murder or manslaughter committed, shall put in writing the effect of the evidence given to the jury before him, being material; and shall bind all such by recognizance or obligation, as do declare any thing material relating to the same, to appear at the next circuit or superior court, to be holden within the county where the trial thereof shall be; then and there to give evidence between the territory and the party so indicted, at the time of the trial, and shall certify as well the same evidence, as such bond or bonds in writing, as he shall take, together with the inquisition or indictment before him taken and found, at or before the time of his said trial thereof, to be had or made; and in case any coroner shall offend in any thing contrary to the true intent and meaning of this act, the circuit or superior court, holden in the county where such offence shall happen to be committed, upon due proof thereof, by examination before them, shall for every such offence set such fine on every such coroner, as they shall think meet.

SEC. 5. *And be it further enacted,* That if any person be grievously wounded, especially if the wounds be mortal, the party accused shall be taken immediately, and kept until it be perfectly known, whether he that was hurt shall recover or not; and if he die, the defendant shall be kept; and if he recover health, he shall be attached by pledges, according to the danger of the wound.

Moreover, if any be accused of any act done as principals, they that be accused as accessary, shall be attached also, and safely kept in custody until the principal be attained or delivered.

If any be suspected of the death of any man being in danger of life, he shall be imprisoned as before is said, in like manner hue shall be levied for all murders and burglaries, and for men slain, or in peril to be slain; and all shall follow the hue and steps, as near as can be; and he that doth not, shall be amerced at the discretion of a jury.

If any be found culpable by inquisition, taken in manner directed by this act, and be not present in custody, the coroner shall straight issue his warrant to apprehend the person so found culpable; and the accessaries, if any, and the person accused, if apprehended, shall straightway be carried before some justice of the county or corporation, where such offence was committed, to be dealt with as the law directs.

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* When there is no coroner, a justice may act as one. See Title "Justices of the Peace." Chapter 7.

If any coroner be remiss, and make not inquisition upon a view of the body slain or murdered, or shall not endeavour to do his office upon any person dead by misadventure, or shall not certify the inquisition by him taken in the manner directed by this act, he shall for every such offence forfeit the sum of three hundred dollars, to be recovered by action of debt, in any court of record of this territory; one half thereof to the use of the informer, and the other half to the use of the territory.

Sec. 6. *And be it further enacted*, That whenever it shall happen in the case of any sudden death, or death in prison, that the coroner cannot in convenient time be requested to attend, it shall be the duty of the nearest justice of the peace to perform the services required in this act to be performed by the coroner.

CHAPTER II.

An Act amendatory to an Act, entitled "An Act prescribing the Mode of Collecting and Accounting for Fines and Forfeitures."—*Passed December* 24, 1812.

[Sec. 1. Will be found under "Fines and Forfeitures," p. 367.

Sheriff not liable for the casual escape of a prisoner.

Sec. 2. *And be it further enacted*, That no sheriff or coroner, as the case may be, shall be liable to pay the fine, or forfeiture, or amercement which may have been imposed by any court of this territory, against any person who shall have been committed to his custody, by the court imposing the same, or where any person shall be taken in execution to satisfy any fine, forfeiture, or amercement, unless such sheriff or coroner shall have received the money, or suffered a wilful or negligent escape; but whenever the proper tribunal shall have discharged any person who was committed or taken in execution as aforesaid, or such person shall have escaped without any connivance, or neglect of the sheriff or coroner (as the case may be) upon proof thereof made to the superior court of law and equity of the county where such person has been in custody, such court shall certify the same to the auditor of public accounts, who shall release such officer from the fine, or forfeiture, or amercement with which he may have been charged, on account of such person committed by the court, or taken in execution as aforesaid.

Acts repealed.

Sec. 3. *And be it further enacted*, That all acts and parts of acts, coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER III.

An Act making further Regulations in Judicial Proceedings.—*Passed December* 24, 1812.

Judgments not to be entered against an officer for an escape, unless wilful.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That no judgment shall be entered against any sheriff or other officer, upon any suit brought upon the escape of any debtor in his or their custody, unless the jury who shall try the issue in the cause expressly find that such debtor or prisoner did escape, with the consent, or through the negligence of such sheriff or other officer or officers, or that such prisoner might have been retaken, and the sheriff and his officers neglected to make immediate pursuit.

Bail to defend the suit.

Sec. 2. *And be it further enacted,* That in all actions where bail is required, and where any original process in such cases returned executed, and if the defendant shall fail to appear according to the commands thereof, the bail in such action may defend the suit, and shall be subject to the same judgment and recovery, as the defendant might or would have been subject to; and in actions of detinue the bail shall be subject to the restitution of the thing sued for whether animate or inanimate, or the alternate value according to the judgment of the court, and the bail piece shall be so altered in such cases as to authorize the bail, in addition to the privileges already allowedh im by law, to restore the thing sued for; and if the sheriff in such cases shall not take or return bail as required of him, or the bail returned shall be judged to be insufficient by the court, and the defendant shall fail to appear, and give bail, in such case the sheriff, in addition to the privileges already allowed him by law, shall have the like liberty of defending such action, and shall be subject to the same recovery, as is provided above for the bail; and if the sheriff depart this life before judgment be confirmed against him, in such case the judgment shall be confirmed against his executors or administrators, or in case there be no executors or administrators, or no certificate of probate, or administration granted, then judgment may be confirmed against his estate, and a writ of *fieri facias* may in either case be issued in the name of such diseased sheriff as if he were living, and be levied on his estate.

Explanation of a former act.

Sec. 3. *And be it further enacted,* That the true intent and meaning of the fifth and seventh sections of an Act, entitled "An Act concerning bail in Civil Cases," published in the digest of the laws of this territory, as to the privilege of the bail in surrendering his or their principal is, and shall be construed to be, that the bail shall have liberty at any time before final judgment obtained against him on a *scire facias*, to surrender to the court from which such process issued, or to the sheriff returning such process during the sitting of such court, or to the sheriff in the recess of such court, the principal in discharge of himself and the bail in any action, shall have a right to plead in bar to any *scire facias* against him, her, or them, the death of the principal at any time previous thereto; and if on the trial of any such issue, it shall be found that the principal is not living, judgment shall be given in favour of the defendant to such *scire facias*.*

CHAPTER IV.

Extract from "An Act concerning Jurors, and for other purposes."—*Passed December* 20, 1815.

Allowance to clerks and sheriffs for their public services, &c.

SEC. 2. *And be it further enacted*, That hereafter it shall be the duty of the county courts in each county, to make such allowance to the clerks and sheriffs of their several counties, for their public services rendered either in the superior or county court, as to said county court shall seem reasonable and just: *Provided*, the sum allowed shall not exceed fifty dollars per annum to any clerk or sheriff; also to allow to all constables the sum of one dollar for each day they shall be necessarily attending the superior court, which sums of money shall be paid out of the county treasury; and no clerk, sheriff, or constable, shall be entitled to receive any sum or sums of money out of the territorial treasury, under any pretext whatever, for public services rendered after the passage of this act.

CHAPTER V.

Extracts from an Act passed February 7, 1818, entitled "An Act for the better Regulation of Judicial Proceedings."

Sheriff or clerk, on failure of returning an execution, subject to a recovery of 15 per cent. interest.

SEC. 6. *And be it further enacted*, That if any sheriff shall on the return of an execution, fail to pay over any money collected by virtue thereof, he shall on motion of the plaintiff in such execution, as in other cases, be subject to a recovery of the amount by him received, and damages at the rate of fifteen per centum: and if any clerk shall fail to pay, on demand, to the party entitled thereto, or his attorney, any money by him received, in his capacity as clerk, he shall in like manner be subject to a recovery of the amount so received, and damages at the rate of fifteen per centum; the damages in either case, to be calculated from the time at which it is in evidence such sheriff or clerk received such money.

Sheriff liable in certain cases.

SEC. 7. *And be it further enacted*, That if any sheriff shall fail to make the money required by any execution, before the return day thereof, when the defendant has sufficient property, within the knowledge of such sheriff, he shall be liable to a recovery of the amount due on such execution, including interest and cost in an action on the case, brought by the party aggrieved.

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* See title "Bail," p. 32, and "Judicial Proceedings," p. 465.

CHAPTER VI.

Extract from an Act passed December 14, 1819, to regulate Proceedings in the Courts, &c.

SEC. 36. *And be it further enacted*, That the clerks of the circuit and county courts, and the sheriffs in the different counties in this state, shall, after the first day of July next, keep their offices at the several court-houses or places of holding courts therein, or within one mile thereof.

NOTE.—The mode of appointing sheriffs and coroners, and other provisions relating to them, will be found under the head of "Public Officers."

Sundry regulations, as to the duty of sheriffs, are introduced under their respective titles, particularly that of "Executions."

CHAPTER VII.

Extract from an Act passed January 1st, 1823, entitled "An Act to make Appropriations for certain Claims against the State."

SEC. 36. *And be it further enacted*, That from and after the passage of this act, the fees allowed to coroners for holding inquests, shall be paid out of the county treasuries.

STRAYS.—1820.

CHAPTER I.

An Act to reduce into one the several Acts concerning Strays.—*Passed December* 21, 1820.

Strays, how taken up.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That every person who shall take up a stray, which shall be found on his plantation or land, shall forthwith give information thereof to some justice of the peace for the county, and make oath before said justice, that the same was taken up at his or her plantation or place of residence, or his or her land adjoining the same, and that the marks or brands have not been defaced or altered since the taking up; and thereupon the said justice shall issue his summons to two disinterested householders of the neighbourhood, commanding them, after being duly sworn, to value and appraise the same without partiality, favour, or affection, and certify the valuation under their hands, together with a particular description of the kind, marks, brands, stature, colour, and age; which certificate shall be attested by the justice, and trasmitted by him to the clerk of the county court within ten days thereafter, to be by such clerk entered in a book to be kept for that purpose, for which the justice and

To be appraised.

Clerk county court to keep record.

the clerk shall each receive fifty cents, to be paid by the taker up: *Provided*, That if two or more strays of the same species are taken up by the same person at the same time, they shall be included in the same entry and one advertisement, and the justice and the clerk shall receive no more fees than for one of such strays.

Two or more to be included in same entry.

Escape or death of strays to be reported.

SEC. 2. *And be it further enacted*, That when any stray as aforesaid shall be found dead, or shall have escaped, the taker up shall, without delay, make report thereof to the clerk, on oath, who shall make a memorandum of the same in the margin of his book, where the certificate of such stray was registered, and the taker up shall not be answerable for the same, nor shall the taker up be liable for using said stray: *Provided*, the same shall not have been abused.

Expenses of keeping a stray, how ascertained.

SEC. 3. *And be it further enacted*, That when any stray shall be proven away, and the owner and the taker up cannot agree as to expenses, application may be made by either party to the next justice of the peace, who shall require two householders of the neighbourhood, who shall have the privilege of appointing an umpire, and adjust the dispute, and their award shall be final.

Penalty for disposing of stray.

SEC. 4. *And be it further enacted*, That if any person shall take or send away any stray out of this state, on any pretence whatsoever, or shall trade or sell the same under twelve months, he or she so offending, shall forfeit and pay one hundred dollars, to be recovered in any court of this state having jurisdiction thereof, one half to the use of the informer, and the other half to the use of the county wherein the offence shall have been committed; and moreover, shall pay the owner the amount of the appraisement, or if no owner appear, then to the county, subject to the regulations as is herein after ordered, under the sixth section of this act.

Penalty for taking up a stray or using it improperly.

SEC. 5. *And be it further enacted*, That if any person shall take up, or use a stray of whatever description, contrary to the meaning of this act, shall, for every such offence, forfeit and pay one hundred dollars, recoverable with costs in any court of this state having jurisdiction thereof, one half to the county, and the other half to the person suing for the same.

The property of strays vested in taker up.

SEC. 6. *And be it further enacted*, That the property of every stray or strays, taken up as aforesaid, twelve months after such appraisement, and not proved away by the owner thereof, shall be deemed vested in the taker up of the same; *Provided nevertheless*, That should the owner apply in five years, he shall receive the full amount of such appraised stray, one half from the taker up, and the other half from the county, after paying all reasonable expenses: *And provided also*, That the person so taking up shall account for, and pay into the hands of the clerk of the county, one half of the appraised value of all such strays, according to the true intent and meaning of this act; and if the taker up shall neglect to account with the said clerk for the same, he or she so failing, shall forfeit and pay the appraised value of all such strays, to be recovered by action of debt before any jurisdiction having

Redeemable.

Taker up to pay half the appraisement.

Penalty for neglecting.

cognizance thereof, and it shall be the duty of the clerk to commence suits respectively against all delinquents for the recovery of the same, and shall be entitled to receive five per centum on all money recovered and received, and the balance the said clerk is hereby required to pay over to the county treasurer.

To be recovered by clerk.

Sec. 7. *And be it further enacted,* That it shall and may be lawful for the former owners of any strays, at any time, on proving his property by one or more competent witnesses, to demand and receive from the county treasurer, one half of the value of any such strays appraised and accounted for as aforesaid, deducting therefrom the treasurer's commissions of two per centum for receiving and accounting for the same.

Owner to receive half the appraisement.

Sec. 8. *And be it further enacted,* That it shall be the duty of the taker up of any stray horse, mare, or mule, to cause the same to be exhibited on the first day of each term of the circuit court of the county, next succeeding the time at which such stray shall be taken up, from twelve to four o'clock on each day; that the owner may have an opportunity of claiming his property.

Taker up to exhibit strays.

Sec. 9. *And be it further enacted,* That the clerks of each county of this state shall keep a book, in which he shall register all certificates of strays delivered to him, and file the same in regular order: It shall be his duty to cause a copy of the certificate of appraisement, of every horse, mare, colt, or mule, to be published in the nearest newspaper three times. It moreover shall be the duty of the clerk to make out a fair and correct list of all strays, and affix the same at the door of the court-house of their respective counties, on the first day of each term of the circuit court, omitting such strays as are proven away, escaped, or dead, under the penalty of five dollars for such neglect or omission; the clerk shall receive as fees of office, for advertising any horse, mare, colt, or mule, twenty-five cents; and for every head of cattle, sheep, or hogs, six and one-fourth cents; and for every search of the stray books, twelve and one half cents, to be paid by the person applying to search.

Clerk to keep register of strays, and publish in newspaper.

Sec. 10. *And be it further enacted,* That no cattle or sheep shall be taken up or posted in the months of April, May, June, July, August, September, or October, unless it be a cow with a young calf.

Sec. 11. *And be it further enacted,* That at any time within twelve months it may be lawful for the owner of any stray or strays, taken up under the provisions of this act, to prove his or her property, by his or her own oath, or by the oath or affirmation of any other competent witness, in the following manner, to wit: a certificate, giving a particular description of the stray or strays so claimed, shall be made out, giving the kind, marks, brands, stature, colour, or age of such stray or strays, as may be, which certificate shall be sworn to and subscribed before any justice of the peace, and delivered to the taker up, to be filed in the clerk's office, and the deliverer of such cer-

Strays, how proven.

tificate as before mentioned, and payment of all costs incurred from the posting and keeping such stray or strays, shall deliver up the same to the proper owner.

In case of division of counties, strays, how disposed of.

SEC. 12. *And be it further enacted*, That in all cases of the division of counties, the stray or strays shall belong to the county wherein the same may be found, and shall be disposed of as other strays, posted in said county.

SURVEYORS.—1811.

CHAPTER I.

An Act concerning County Surveyors.—*Passed December* 11, 1811.

County surveyors to be appointed by the governor.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That there shall be a surveyor commissioned by the governor for each and every county in this territory, who shall reside in the county of his appointment, and shall before he enters on the duties of his office, produce his commission in his county court, and in open court take oath, well and truly to execute and perform the duties of his office: And moreover, shall give bond with good and sufficient security, to be approved of by said court, in the sum of two thousand dollars, payable to the governor for the time being, and conditioned for the due performance of the duties of his office.

How qualified.

Duties of surveyors.

SEC. 2. *And be it further enacted*, That it shall be the duty of the said surveyors faithfully to execute all orders of survey directed to them, by any of the courts of this territory, and to make all surveys of lands, lying in the county, of which he is surveyor, and to which the United States have no claim, at the request of the owners or proprietors thereof, and generally to do whatsoever in the resurveying, measuring, and dividing of lands may be required of him, by any person wishing the same done; and in all his mensurations he shall use and be governed by the English perch or pole.

SEC. 3. Relates to fees, and was repealed in 1816: the fees now established are included in title "Fees."

Surveying done in obedience to an order of court.

SEC. 4. *And be it further enacted*, That the fees, chargeable by the county surveyors, as aforesaid, shall be paid by the party desiring the services to be performed, and when the services are rendered in obedience to an order of court, in a suit therein depending, the surveyor shall make out and state an account of his fees for such services written in words at full length, on the back of one of the plats, by him returned to the court, and the same shall be allowed in the bill of costs; to be taxed against the losing party, as other costs: but where it shall happen that the survey, or any part thereof, was made at the instance of the party in the suit, such and so much of the said fees shall not be taxed; as accrue on the work done by the surveyor for him.

Re-survey and re-mark.

SEC. 5. *And be it further enacted*, That it shall be the duty of the county surveyor, whenever called on for that purpose, to re-survey and re-mark, and bound any tract of land in his county, where the old marks are defaced, or are likely to decay and perish, taking special care in all such cases to be governed by the original surveys, patents, or title deeds, of such tracts, and the said surveyors shall make a plain report and certificate of all such re-marks and boundaries, as he may make as aforesaid, and deliver the same to the proprietor or owner of the lands so re-bounded, whose duty its hall be, to have the same recorded in the clerk's office of the county wherein the land is situated, within three months thereafter, and the clerk's fee for recording the same shall be one dollar.

Chain-carrier and marker's compensation.

SEC. 6. *And be it further enacted*, That chain-carriers and markers shall be allowed each one dollar per day for their services as such, to be paid in the same manner as is provided by this act for surveyors.

Chain-carriers sworn by surveyors.

SEC. 7. *And be it further enacted*, That each surveyor appointed under this act shall, and is hereby authorized and required to administer an oath to each of his chain-carriers, faithfully and diligently to perform their duties as chain-carriers without favour, affection, or partiality.

SEC. 8. *And be it further enacted*, That it shall be the duty of each of the surveyors, to be appointed under this act, to write the name of each of his chain-carriers down on his plat.

TAVERN-KEEPERS AND RETAILERS OF LIQUOR.—1803.

CHAPTER I.

An Act to regulate Taverns and restrain Tippling Houses.—*Passed March* 4, 1803.—Revised and amended February 10, 1807.

Tavern licenses.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That every person who shall be recommended for the purpose to the county court of the county, in which such person may be desirous of keeping a tavern, by six or more reputable freeholders of the county, shall be entitled to receive from the county court aforesaid a license to keep a tavern for and during the term of one year from the date of such license: and from thence until the next county court, after the expiration of the said one year: *Provided*, That on receiving the same, the said applicant shall pay to the clerk of the said court, in open court, twenty dollars, for the use of the county: and it shall be the duty of the said clerk to make an entry thereof on his minutes; and within twenty days after the rising of the court; to pay the same into the county treasury, taking the treasurer's receipt, as his voucher for such payment; to be filed in his office.

And further, the applicant, before the said license is delivered to him, shall enter into and acknowledge his bond, with sufficient sureties, in the penal sum of three hundred dollars, payable to the governor of this territory, and his successors in office, conditioned for constantly keeping and providing his said tavern with good, clean, and wholesome diet, and lodging for travellers, and stabling, provender, or pasturage for horses; for and during the term of his license, and for the due observance of all laws and ordinances, which are or may be in force in this territory in relation to tavern-keepers. And when such bond shall be executed and acknowledged as aforesaid, the clerk of the court aforesaid, shall file the same in his office, and deliver the license to the aforesaid applicant: for which and the bond, and all his services respecting the same, except the table of rates, the clerk shall receive two dollars. In case of the breach of, or not complying with, the condition of the said bond, it shall and may be lawful for any person, in the name of the governor, to sue for, and recover, in any court having jurisdiction thereof, the penalty of the said bond, and apply one-half to his or her own use, and the other half to the use of the county, where the cause of action may arise.

Tavern rates.

SEC. 2. *And be it further enacted*, That the justices of the county courts shall fix the rates and prices to be paid at all taverns in their respective counties, once a year at least, for liquors, lodging, diet, stabling, provender, and pasturage; and may increase or diminish the same, as to them may seem proper. And every tavern-keeper shall, within twenty days after the rates are fixed, set up in his public entertaining room, in a conspicuous place, a fair table of rates, certified by the clerk of the court, for which the said clerk shall receive twenty-five cents: there to be constantly kept exposed to public view as aforesaid, under the penalty of twenty dollars.

Penalty for charging more than allowed.

SEC. 3. *And be it further enacted*, That if any tavern-keeper shall receive any greater price for any drink, diet, lodging, provender, stabling, or pasturage, than by such rate shall be allowed, he or she so offending shall forfeit and pay ten dollars for every such offence.

Not to suffer gaming.

SEC. 4. *And be it further enacted*, That it shall be unlawful for any inn-holder or tavern-keeper to permit or suffer any cock-fighting, or playing with cards or dice; or to keep any gaming table of whatsoever denomination, or any kind of gaming whatsoever, in his or her inn, or tavern; or in any out-house, tenement, yard, or garden belonging thereto. And for every such offence, he or she so offending shall forfeit and pay eight dollars.

Retailing without license.

SEC. 5. *And be it further enacted*, That if any person shall presume to keep a tippling-house, or sell rum, brandy, whiskey, taffia, or other spirituous liquors, in less quantity than one gallon, except as is hereafter excepted; or shall sell any strong beer, porter, cider, or wine, in less quantity than four gallons, without a license first obtained, as aforesaid, he or she so offending, shall for the first offence forfeit and pay ten dollars; and every succeeding offence, the sum of twenty dollars*: *Provided nevertheless*, That nothing in this act contained shall be so construed as to prevent merchants and shop-keepers from retailing liquors, in any quantity above a quart,† so that the same be not drunk with his or her consent or privity, in their stores, or on the premises where they reside or have their stores.

Duty with regard to apprentices, &c.

SEC. 6. *And be it further enacted*, That if any inn-holder or tavern-keeper, or other person whosoever, shall give, sell, or deliver any kind of spirituous, fermented, or strong liquors whatsoever, to any apprentice, servant, or slave, or in any way entertain them, without the consent or permission of the master, owner, or such other person as shall have such apprentice, servant, or slave in their care; every person so offending, shall for the first offence forfeit and pay the sum of ten dollars; and for every succeeding offence, the sum of twenty dollars.

Penalty for selling liquor to troops,

SEC. 7. *And be it further enacted*, That no tavern-keeper, inn-holder, or retailer of spirits, shall presume to sell any rum, brandy, wine, or other kind of intoxicating liquors, to any soldier or soldiers stationed within this territory, belonging to, and in the actual service of the United States, knowing him or them to be such, without permission from one of his or their commissioned officers. And such tavern-keeper or other person as aforesaid, so offending, shall for every such offence forfeit and pay the sum of twenty dollars: *Provided*, That nothing contained in this act shall be so construed as to extend to those who are permitted to sell within the military lines.

Or Indians.

SEC. 8. *And be it further enacted*, That if any person or persons, residing in, coming into, or passing through the Mississippi territory, or any part thereof, shall presume to furnish, vend, sell, or give, or shall direct or procure to be furnished, vended, sold, or given, upon any account whatsoever, to any Indian, or Indians, being within this territory, any rum, brandy, whiskey, or other intoxicating liquor, or drink, without special permission in writing from the governor, as superintendent of Indian affairs; he or she so offending, shall forfeit and pay for every quart of such liquor or drink so furnished, the sum of twenty dollars; and for every quantity furnished at one time, less than a quart, the sum of ten dollars; to be recovered by any person suing for the same, by any justice of the peace of the proper county, when the sum of the penalty or penalties does not exceed the sum of twenty dollars; and when the sum shall exceed twenty dollars, before any court having competent jurisdiction; to be applied, in either case, one half to the informer, and the other half to the use of the territory.‡

Selling adulterated liquor.

SEC. 9. *And be it further enacted*, That if any tavern or inn-keeper, or other person within this territory, shall presume to sell rum, brandy, or such like spirits, that is adulterated with water, or any other liquor, knowing the same to be adulterated, or mixed, and being convicted thereof by the testimony of one or more credible witnesses, he or she so offending, shall for every such offence forfeit and pay twenty dollars.

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* See the Act of 1812, Chapter 4, of this Title.

† A subsequent Act allows them to sell by the quart.

‡ Farther provision on this subject will be found under Title "Trade and Commerce."

Drunkenness. SEC. 10. *And be it further enacted*, That if any inn-holder or tavern-keeper, shall be convicted of being drunk in his own inn, or tavern, besides the penalty consequent on the crime of drunkenness, his license shall immediately thereupon become void.

Mode of recovery. SEC. 11. *And be it further enacted*, That all the fines and forfeitures herein before inflicted by this act, shall be recovered before any justice of the peace for the county wherein the offence may have been committed, one half to the use of the county, and the other half to the use of the person suing for the same.

Repealing clause. SEC. 12. *And be it further enacted*, That this act shall be in force from the passing thereof; and all laws heretofore made for regulating taverns, and inns, retailers of strong liquors, and all clauses and parts of laws concering them, coming within the purview of this act, be, and the same are hereby repealed.

CHAPTER II.

Extract from "An Act establishing Patrols."—*Passed December* 5, 1809.

SEC. 8. *And be it further enacted*, That all persons licensed to retail spirituous liquors, shall take an oath to the following effect, viz.: I, A. B. do solemnly swear (or affirm, as the case may be,) that I will not sell or retail any spirituous liquors to any slave, nor will I purchase any article whatever from them without a written permission from his master, owner, or employer: So help me God.

CHAPTER III.

Extract from "An Act fixing the Time of holding the intermediate Courts," &c.—*Passed December* 3, 1810.

SEC. 6. *Whereas* persons are sometimes desirous of obtaining permission to retail spirituous liquors during the recess of courts: *Therefore, be it enacted*, That on such person taking the oath required by law, which oath the clerk is hereby authorized to administer, and entering into bond, with security, as the law directs, and depositing with the clerk of the court the amount of the tax and fee on such license, the said applicant shall be entitled to receive from said clerk a certificate of such deposite, for which the said clerk shall receive fifty cents for his fee thereon; and such applicant shall thereby be authorized to retail liquors, &c. until the next succeeding county court, to which the said applicant shall present the said certificate for approbation, and if approved by the court, the clerk shall issue a license to the said applicant, to continue in force for one year, from the date of said certificate; and if not approved, the clerk shall refund to the applicant so much of the tax as corresponds to the time yet to come of one year from the deposite.

CHAPTER IV.

An Act to amend an Act, entitled "An Act to regulate Taverns, and restrain Tippling-Houses."—*Passed November* 18, 1812.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That it shall be the duty of the clerks of the several county courts, on the first day of each term of the superior court of their respective counties, to furnish the court with a list of the persons who have obtained tavern licenses within one year immediately preceding such court; and every clerk neglecting so to do, may be fined by the said court in any sum not exceeding fifty dollars, which list shall be delivered by the court to the grand jury for their information; and this act, together with the act to which this is an amendment, given in charge by the court to the grand jury aforesaid; and the grand jury shall present every person or persons who may hereafter violate this act, or the acts to which this is an amendment; and it shall be the duty of the judges of the superior court, upon such presentment being made by the grand jury, to cause the person or persons so presented, to appear before the court, to be tried by a petit jury, without any indictment being filed, and if found guilty, the court shall, and they are hereby vested with power and authority to assess a fine, not exceeding one hundred dollars, on every person or persons so found guilty.

SEC. 2. *Be it further enacted,* That the fines imposed by virtue of this act, shall be paid into the county treasury, to be appropriated to county purposes.

SEC. 3. *And be it further enacted,* That so much of the fifth section of the act to which this is an amendment as imposes fines for the violation of said act, be, and the same is hereby repealed; and the fines imposed by this act substituted in lieu thereof.

CHAPTER V.

An Act reducing the Rate of Tavern Licenses, and for other purposes.—*Passed December* 2, 1814.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That any person residing without the limits of any town or village, wishing to keep a tavern, and complying with the requisites of the law, shall be entitled to receive a license upon paying the sum of ten dollars, in lieu of the sum of twenty dollars heretofore required by law.

Tavern licenses—alterations respecting their rates.

SEC. 2. *And be it further enacted,* That it shall be the duty of the assessor, tax collector, and sheriff of each county, if it should come to their knowledge by information or otherwise,

Information to be given to attorney general against

offenders, and in what manner.

that any person is retailing spirits, to give information thereof to the attorney-general, at the commencement of each term of the superior court of their county, and to furnish a list of the witnesses to prove the same, and the attorney-general shall cause the said witnesses, provided such person has not obtained a tavern license, to be sworn, and sent to the grand jury; he shall also at each term of the superior court move that a fine be assessed against each and every clerk who shall neglect to furnish the court with a list of the persons having obtained tavern licenses agreeably to the provisions of the act passed the eighteenth day of November, one thousand eight hundred and twelve.*

CHAPTER VI.

An Act providing in what manner Distillers of Spirituous Liquors shall be authorized to dispose of the same.—*Passed January* 15, 1814.

Distillers may sell spirits by the quart.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That hereafter, all owners of distilleries within the territory shall be, and they are hereby authorized, to sell spirits of their own distillation, in any quantity not less than a quart.

CHAPTER VII.

Extract from an Act to raise a Revenue.—*Passed December* 27, 1815.

Assessors and collectors to inquire who sell liquor without license.

SEC. 24. *And be it further enacted,* That it shall be the duty of each and every assessor and tax collector of the several counties within this Territory, or in case any of them should die before he shall have finished the duties of his office, the person who shall have power to complete the business commenced by such deceased assessor or collector, to inquire and ascertain as well as they can, the name or names of each and every person or persons within their respective counties, who shall retail any vinous or spirituous liquors without being licensed according to law, and give information thereof, with a list of the witnesses who can prove the same, to the attorney general, at the commencement of each term of the superior court of his proper county, or to the nearest and most convenient justice of the peace, of the county or corporation where such unlicensed person or persons hath committed the offence; and it shall be the duty of each and every court within said territory on application for the same, to furnish each and every assessor and collector of his proper county, a complete list of licensed retailers of vinous and spirituous liquors within such county, showing the commencement and end of such license.

Duty of clerks to furnish lists of persons licensed.

CHAPTER VIII.

An Act to amend an Act, entitled An Act to regulate Taverns and restrain Tippling Houses.—*Passed November* 27, 1816.

Liquors may be retailed by the quart without license.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That merchants and shopkeepers shall be, and they are hereby authorized to sell and retail liquors by the quart, without a license from the county court of their county, so that the same be not drank with their consent and privity in their stores, or on the premises where they reside or have their stores; any thing in the act to which this is an amendment to the contrary notwithstanding.

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* So much of the 2d Section of this act as relates to the "duty of Assessors and Tax Collectors," was repealed in 1815.

SEC. 2. *And be it further enacted*, That hereafter it shall not be lawful for free negroes to be licensed to keep tavern, or retail spirituous or vinous liquors; any law to the contrary notwithstanding.

Free negroes not to be licensed to keep taverns or retail liquors.

CHAPTER IX.

An Act to prevent the Sale of Spirituous Liquors to Indians.—*Passed December* 6, 1816.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That it shall be the duty of the several grand juries in the several counties in this territory, to present any person or persons who shall retail or sell spirituous liquors to an Indian or Indians, in violation of an act of assembly heretofore passed on that subject; and the penalty or penalties prescribed by the said act, may be recovered upon presentment, and shall go to the use of the county in which the offence shall have been committed.

Grand juries to present offenders.

Penalties to go to county.

SEC. 2. *And be it further enacted*, That each and every person who may hereafter apply for a permit or license to retail spirituous liquors shall, before the same is granted, subscribe and swear to the following oath: "I do swear, that I will not sell any spirits to any Indian or Indians, or knowingly permit it to be done on my premises, at any time during the continuance of my permit, (or license, as the case may be;") which oath the clerk of the county court is hereby authorized to administer; and any person who shall violate said oath, is hereby declared to be guilty of wilful or corrupt perjury.

Licensed retailers of spirits to take an oath not to sell to Indians.

NOTE.—An Act to promote health, by preventing the sale of unwholesome Liquors and Provisions, is inserted under title "Public Health," p. 690.

TAXES.—1809.

CHAPTER I.

Extract from an Act to raise a Revenue.—*Passed December*, 1809.

NOTE.—This act was repealed by an act bearing the same title, passed in December, 1815; but it becomes necessary to insert the thirteenth section, inasmuch as the "Act concerning Tax Collectors," passed in 1811, has a direct allusion to it.

SEC. 13. *And be it further enacted*, That the justices of the quorum in each and every county within this territory shall, on the last Monday in July, in each and every year, (except the justices of the quorum of the counties of Washington and Madison for the year 1810, shall on the last Monday of August,) hold at their court-houses respectively, a special court for the purpose of examining the account of insolvencies that may be returned by the collectors of their respective counties, and shall certify such allowance as to them shall seem fair and just, to the auditor of public accounts, who shall allow the same so certified to the collector, in a settlement of his account. The said courts shall further have power to grant relief to such persons as may have been improperly taxed, or overtaxed by the assessor, and upon certifying the same as in cases of insolvencies, the auditor of public accounts shall allow the same to the collector in a settlement of his account; and if any person to whom relief may be granted in manner aforesaid, shall not have paid the same to the collector, he shall be exonerated from the same; and if he shall have paid them, the collector shall refund the same amount to him; and the auditor, at the time of settlement with the collectors respectively, shall suspend any proceedings against any collector for any amount of taxes due on lands that may be then advertised for sale, until after such day of sale.

CHAPTER II.

An Act concerning Tax Collectors.—*Passed December* 16, 1811.

Tax collector's allowances.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That where the special court directed by the thirteenth section of the act, entitled "An Act to raise a Revenue," may not have been held in any county in this territory, or from any other cause, the collector may not have had his list of insolvencies allowed and certified, the auditor of public accounts is hereby authorized and required to allow to the collector of such county, for all such delinquencies as shall be made satisfactorily to appear to him ought to have been allowed by such court.

[SEC. 2. Expired.]

If justices shall fail to hold courts, &c.

SEC. 3. *And be it further enacted,* That hereafter, if the justices of any county court of any county, shall fail to hold a court as directed by the thirteenth section of the before recited act, it shall be the duty of the next county court of such county, (whether it be an intermediate or regular term) to make such allowance to the collector as he may make appear to be reasonable and just: *Provided, however,* That this provision shall not be construed to authorize the county court of any county to certify any account of insolvencies to any collector who may already have had one list of insolvencies certified.

Proviso.

Allowance to collectors for moneys improperly assessed.

SEC. 4. *And be it further enacted,* That the auditor of public accounts be authorized, and he is hereby required to make an allowance to any collector of the revenue for any moneys with which he may stand charged, and which may be made satisfactorily appear was improperly assessed, and when any collector hath, or hereafter may use due diligence to collect the tax due from any person or persons, by exposing for sale his, her, or their lands or tenements, and the same shall not have been sold from want of bidders, such collector shall not be bound to account for the same, until he may have collected the same: *Provided also*, That where any collector shall have advertised for sale any lands or tenements to raise the taxes due, and the lands or tenements thus advertised, could not be sold from want of bidders, that he may adjourn any such sale from time to time, until the same shall be sold; and any sale made on any adjourned day, shall be valid to all intents and purposes, as if the same had been made on the day mentioned in the advertisement. **Proviso.**

SEC. 5. *And be it further enacted*, That hereafter, where any assessment of taxes shall have been improperly made, the county court of the proper county may certify the same, and the auditor of public accounts, on a final settlement with such collector, shall make him an allowance of the same.

CHAPTER III.

An Act providing a Tax for County Purposes, and to Reduce the Territorial Taxes.—*Passed December* 17, 1812.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the county courts at their first or second term after the first day of January in each and every year, shall, according to the demands of their respective counties, be authorized to lay a tax upon the same property and objects, as are subject to territorial taxes, according to the assessment for that year: *Provided*, That the county tax shall not exceed upon each particular article or object, one half of the territorial tax. And the county tax shall be levied and collected by the tax collector, at the same time, and in the same manner as the territorial tax, and shall be paid by the collector into the hands of the county treasurer, at the same time as the territorial taxes are required to be paid into the hands of the territorial treasurer, and shall be in all respects under the same regulations and restrictions, which by law are provided for the due collection and payment of the territorial tax, and the tax collector shall be allowed the same compensation for collecting the county, as the territorial tax. **County courts authorized to lay a tax.** **How to be levied and collected.**

SEC. 2. *And be it further enacted*, That if any county court shall fail to levy such county tax, previous to the first day of June in each year, it shall in that case be the duty of the chief justice, or if there be no chief justice, then any other justice of said courts, to call the justices of his court together at the courthouse, on five days notice, which it shall be the duty of the sheriff to give, and the said justices, or any three of them, shall have power to levy the said tax, in the same manner as if the **Time for levying county tax.**

same had been at a regular term, and it shall be the duty of the clerk and sheriff to attend the said court so called accordingly.

List of taxable property to be returned.

SEC. 3. *And be it further enacted*, That it shall be the duty of the assessors of taxable property, in their respective counties, to return one list thereof to the county court, and one to the county treasurer, at the same time, and in the same form as they are required to return the same to the auditor of public accounts.

Money, how to be appropriated.

SEC. 4. *And be it further enacted*, That it shall be the duty of the county courts to direct the appropriation of the money which may come into the county treasury: *Provided*, that any claim which may have been liquidated and allowed according to law by the county courts, against their respective counties, shall be a legal tender, in payment of any county tax, or claim of the proper county.

Treasury accounts to be made out and laid before the county court.

SEC. 5. *And be it further enacted*, That the several county treasurers within this territory, shall, on the first day of their respective county courts, in each and every year, make out and lay before the county court a correct statement of their treasury accounts, and every county treasurer, failing to make such reports, shall forfeit and pay the sum of one hundred dollars, recoverable before any court having jurisdiction thereof, one half to be paid to the person who shall sue for the same, and the other half to be appropriated for county purposes.

Funds, how to be appropriated.

SEC. 6. *And be it further enacted*, That the county courts shall not appropriate the funds of their counties to any objects, but such as are contemplated by law.

Tax collector's duty.

SEC. 7. *And be it further enacted*, That where any tax collector has returned any delinquent, it shall be the duty of such tax collector, or his successor, if in his power afterward) to collect the tax of such delinquents, and make return thereof at the same time as above provided. and to this end it shall be the duty of the respective county treasurers, to put into the hands of the respective tax collectors, as soon as may be, after the first day of November in each year, a list of such delinquents, and the sum by them respectively due and owing.

Tax collector to give bond.

SEC. 8. *And be it further enacted*, That it shall be the duty of the respective tax collectors, previous to the commencement of his collection in each year, to enter into bond to the governor of the territory, and his successors in office, with security to be approved by the county courts respectively, or the chief justice thereof, in double the amount of the county tax, levied and to be collected by him, conditioned for the due performance of the duties required of him by this act, which bond shall be filed and recorded in the clerk's office of the county courts respectively, and may be proceeded on at the instance of the county treasurer, in the same manner as the bonds for the collection of the territorial tax.

CHAPTER IV.

An Act for the Relief of the several Tax Collectors.—*Passed January* 20, 1814.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the several tax collectors heretofore appointed, and which may hereafter be appointed, their executors or administrators, shall be, and they are hereby authorized to finish the collection of all arrearages of taxes, notwithstanding the time may have expired for which such collector was appointed.

Tax collectors to finish their collection.

CHAPTER V.

An Act authorizing County Treasurers to pay Jurors.—*Passed December* 1, 1814.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That it shall be the duty of the several county treasurers of this territory, and they are hereby authorized and required to discharge all jurors' certificates, issued prior to the twenty-fourth day of December, 1812, out of any money in their hands, not otherwise appropriated; and the tax collectors for the several counties respectively, shall receive the same in discharge of county taxes, in like manner as other county paper.

Jurors' certificates to be discharged.

To be received in discharge of county taxes.

SEC. 2. *And be it further enacted,* That all sums of money which have been or may hereafter be paid into the several county treasuries, for the express purpose only of discharging jurors' certificates, shall be subject to the disposition of the county courts of each county, any law or usage to the contrary notwithstanding.

CHAPTER VI.

An Act to authorize Tax Collectors and other Officers to publish Advertisements in any Public Newspaper of this Territory.—*Passed December* 24, 1814.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That from and after the passage of this act, it shall and may be lawful for all tax collectors, other officers or persons, who by law are required to advertise any notice in any newspaper in this territory, to publish the same in that paper which is most convenient to the person or persons thus required to advertise, any other custom to the contrary notwithstanding.

Tax collectors and other officers authorized to publish advertisements in papers most convenient.

CHAPTER VII.

An Act to amend an Act, entitled " An Act to amend an Act creating the Officers and defining the Duties of Territorial and County Treasurers, and for other purposes."—*Passed December* 27, 1814.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That in case the Mississippi Bank, the Planters' Bank,

In case of certain banks

failing, the same to be made known by the governor by proclamation.

or the Louisiana Bank, or either of them, should hereafter fail, or from any cause be rendered manifestly unable to discharge their paper, the governor shall, and he is hereby required to make the same known by proclamation to the several tax collectors, and other officers concerned in collecting moneys accruing to the territory, and the said collectors, and such other officers, shall immediately upon receiving such information desist from receiving in payment of taxes, or public dues, notes issued by the bank so failing, and the notes issued by such bank shall not thereafter be a legal tender in payment of any public dues accruing to this territory; *Provided, however,* That nothing herein contained shall be so construed as to prevent the collector or other officers from paying into the treasury, as heretofore, such notes as may have been received by them in discharge of such public dues previously to their having information of the governor's proclamation issued as required by this act, but the auditor of public accounts shall, previously to any such notes being paid into the treasury, require such collector or other officer, to make oath that the whole amount so offered by him in payment was received by him previously to his having any knowledge of such proclamation.

CHAPTER VIII.

An Act to regulate Sales at Auction.—*Passed November* 21, 1818.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the Alabama Territory, in general assembly convened,* That from and after the first day of March next, there shall be levied, collected, and paid upon all sales by way of auction as hereafter described, which shall be made within the Alabama territory, the respective rates and duties following, to wit: the sum of one dollar for every hundred dollars of the purchase money arising by sale at auction of goods, wares, and merchandise; and the sum of twenty-five cents for every hundred dollars of the purchase money arising by sale at auction of ships or vessels; and at the same rate, for any greater or lesser sum, except as herein after excepted; the said respective rates and duties to be paid by the auctioneer or person making such sales at auction, out of the moneys arising from each and every such sale: *Provided always,* That nothing in this act contained shall extend to any sale or sales by auction, of goods, wares, or merchandise, made pursuant to, or in execution of any rule, order, decree, sentence, or judgment of any court of the Alabama territory, or made in virtue or by force of any distress for rent, or other cause for which a distress is allowed by law, or made in consequence of any bankruptcy, or insolvency, pursuant to any law concerning bankruptcies or insolvencies, or made in consequence of any general assignment of property and effects, for the benefit of creditors; or made by or on behalf of executors or administrators; or made pursuant to the directions of

Rates.

Proviso.

any law of the Alabama territory, touching the collection of any tax or duty, or disposal by auction of public property of the United States, or of the Alabama territory; nor to any such sale or sales by auction, of ships or vessels, their tackle, apparel, and furniture, or the cargoes thereof, which shall be wrecked or stranded within the Alabama territory, and sold for the benefit of the ensurers or proprietors thereof.

NOTE.—The residue of this act will be found under Title "Trade and Commerce."

CHAPTER IX.

An Act to raise a Revenue.—*Passed December* 27, 1815.

NOTE.—This act has never been expressly repealed. It is an act to raise a revenue generally, and not for the particular year following the time of its being passed. Most of its provisions are incorporated in the different acts passed by the Alabama Legislature. It is proper, however, that it should be wholly or partially repealed. On this account it is inserted.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That a tax for the sums, and in the manner herein after mentioned, shall be raised in each and every year, and paid into the public treasury for the use of said territory.

SEC. 2. *And be it further enacted,* That the sum of twenty cents for every hundred dollars value be paid on all land lying within this territory, claimed or held by virtue of any British or Spanish patent, or order of survey, and also on all donation claims, the right whereof has been confirmed by either of the boards of commissioners of the United States appointed for settling claims to land south of the state of Tennessee, and on such part of all pre-emption claims as shall have been paid for by such claimant; and such other claims as may be founded on lands purchased of the United States, which the assessor is required to ascertain at the time of taking in the taxable property under the several regulations herein after expressed: Class number one shall contain all lands lying within eight miles of the city of Natchez, the first quality of which shall be rated at twelve dollars per acre; the second quality at eight dollars per acre; and the third quality at three dollars per acre. Class number two shall contain all lands lying within fourteen miles of the Mississippi River, and not included in class number one, the first quality of which shall be rated at seven dollars per acre; the second quality at four dollars per acre; and the third quality at two dollars per acre. Class number three shall contain all lands more than fourteen and not above twenty miles from the Mississippi River, the first quality of which shall be rated at five dollars per acre; the second quality at three dollars per acre; and the third quality at two dollars per acre. Class number four shall contain all lands lying more than twenty miles from the Mississippi River and west of the Dividing Ridge between the Chickasaw-hay and Tombeckbee rivers, the first quality of which shall be rated at four dollars per acre; Lands classified.

the second quality at three dollars per acre; and the third quality at two dollars per acre. Class number five shall contain all lands lying East of the Dividing Ridge between the Chickasaw-hay and Tombeckbee Rivers, the first quality of which shall be rated at six dollars per acre; the second quality at three dollars per acre; and the third quality at two dollars per acre. Class number six shall contain all lands lying within the boundaries of Madison county, the first quality of which shall be rated at six dollars per acre; the second quality at three dollars per acre; and the third quality at two dollars per acre. And there shall also hereafter be paid the sum of fifty cents on each slave, and the sum of sixty-two and one half cents shall be levied on all free males above the age of twenty-one years, and under the age of fifty years; and the sum of twenty cents on every hundred dollars value of all lands, lots, and buildings within any city, borough, or town, to be estimated by the person giving in the same upon oath; and twenty-five cents per hundred dollars on the amount of sales of merchandise within the year immediately preceding the first day of January in each and every year, the time at which the assessors appointed under this act are authorized and required to begin the duties of their office, and in taking in the list of taxable property to have reference to that day; and the sum of one dollar and twenty-five cents per wheel on every pleasurable carriage. And it shall be the duty of the President of the Bank of the Mississippi to make return on oath to the assessor of the territorial tax of Adams county, at the same time that he is bound by law to return a list of his own taxable property, a list of the amount of capital stock of said bank actually subscribed for, and the sum of twenty-five cents on every hundred dollars capital stock of the Bank of the Mississippi actually subscribed for shall be assessed and annually by the collector of the general tax of Adams county, and by the said collector paid over to the territorial treasurer at the same time and under the same regulations that are provided for the payment of the territorial taxes; *Provided*, that nothing in this act shall be so construed, as to authorize the imposition of any tax upon the property or estate of any religious society; for the education of youth, or the maintenance of public schools, or for charitable purposes, or upon any property belonging to any incorporated city or town in this territory; or a poll tax upon any officer or soldier in the army of the United States.

Tax on the Mississippi bank.

Proviso. Property and persons exempt from taxation.

An assessor to be appointed,

SEC. 3. *And be it further enacted*, That there shall be appointed by the governor of the Territory annually, an assessor of the territorial tax in each and every county; and every person who shall be appointed assessor under this act, shall, before he enters on the duties of his office, take the following oath or affirmation, to wit: "I, A. B. do solemnly swear, (or affirm) that I will execute the duties of assessor of the general tax for the county of ———— to the best of my abilities, without partiality, favour, or affection: So help me God." And

His oath.

Penalty for acting without oath.

if any assessor shall execute the duties of said office without first having taken said oath or affirmation, he shall forfeit and pay the sum of five hundred dollars, to be recovered by action of debt, in any court having competent jurisdiction; one half to the party suing for the same, and the other half to the use of the territory.

Duty of assessor.

Tax lists.

SEC. 4. *And be it further enacted*, That it shall be the duty of every assessor appointed by virtue of this act, to apply to every person resident within his county, who hath therein any taxable property, for a list thereof. Which list shall contain an enumeration of all taxable property in his or her charge within said county; and in the account of lands, a particular description of the situation and quality of the same, and to which class it belongs, as also each town lot of land, with the dimensions of, and improvements thereon: Also the amount of sales of all merchandise sold within the year ending on the last day of December immediately preceding the time at which the assessors are herein directed to commence the duties of their office; and the assessor shall state in the last column of his list the total amount of taxes due from each person chargeable with taxes.

Assessor to leave a written notice to return lists.

And in case of neglect or refusal to be doubly taxed.

Persons to give in lists on oath,

and send them sworn to,to different counties.

SEC. 5. *And be it further enacted*, That if any assessor shall go to the house or usual place of abode of any person within his county, who hath in his or her charge any taxable property, and shall not find such person at home, he may leave a written notice at the place of residence of such person, requiring him or her to give in to him the assessor, on or before the day on which the assessor is directed to finish receiving lists of taxable property, his or her taxable property; and if such persons fail to comply with the requisitions of said notice, he shall be considered as a delinquent under this act, and shall be doubly taxed according to the best information that the assessor can obtain, and at the time of giving in to the assessor a list of taxable property, the person giving in the same shall take the following oath or affirmation, to wit: "I, A. B. do solemnly swear (or affirm) that the list of taxable property which I have rendered, contains all the property which I have charge of in the county of ———— subject to taxation, to the best of my knowledge and belief: So help me God," and which oath or affirmation the assessor is hereby authorized to administer: *Provided*, where any person holds taxable property in any other county than that in which he resides, and hath no agent in said county to give in the same, he may send to the assessor of such county a list of his property in such county subject to taxation, sworn to before, and certified by some justice of the peace: *Provided, however*, that when a county line may pass through a tract of land, on which any person resides, he or she may give in the same to the assessor of the county of his or her residence; and every person who hath any taxable property within this territory, and shall fail to give in the same to the assessor of the proper county, on or before the first day of April in each and every year; and all persons

Persons failing, to be doubly taxed.

failing to comply with the requisitions of this section, shall be doubly taxed, according to the best information that the assessor can obtain.

Persons to return all property taxed. As owners, agents, guardians, &c. held on 1st Jan. in each year.

SEC. 6. *And be it further enacted*, That every person shall be liable to pay taxes upon all property both real and personal, of which he shall stand seized, or have in his custody, either as attorney, agent, guardian, executor, or administrator, or in his own right as tenant in fee or for life; or in right of his wife, subject to taxation under this act, on the first day of January in each and every year; and every person who shall sell or convey away any property, either real or personal, after the first day of January, shall give in a list of the same, with his, her, or their taxable property for that year.

Assessors to finish their duty on or before the 1st April, and make four complete lists.

SEC. 7. *And be it further eaacted*, That each and every assessor appointed under this act, shall on or before the first day of April in each and every year, finish receiving lists of taxable property, from persons liable to pay taxes, and shall each make out four complete lists of all taxable property, together with the names of the persons chargeable with the taxes thereon, and the amount of the taxes due from each person; one of which lists he shall, on or before the first day of May, deliver to the collector of his county, who shall be appointed as by this act herein after directed; one copy he shall deposite in the office of the county treasurer of the proper county for the inspection of any person who may choose to examine the same: one other list he shall deposite in the auditor's office, on or before the first day of June, and the remaining copy he may retain for his own use. Any assessor failing to comply with the requisitions of this act, shall forfeit and pay the sum of five hundred dollars, recoverable in any court having competent jurisdiction; one half to the person suing for the same, and the other half to the use of the territory.

One for collector. One for county treasurer's office. One for the auditor's office, and one for himself. Penalty for neglect.

Compensation of assessors.

SEC. 8. *And be it further enacted*, That the assessors in each and every county appointed under this act, shall be entitled to receive at the rate of five per centum on the amount of taxes assessed: *Provided nevertheless*, that no assessor shall receive more than two hundred and fifty, nor less than one hundred dollars for his services respectively, except the assessors of Wayne, Greene, Hancock, Jackson, Marion, Lawrence, and Pike counties, who shall severally be allowed fifty dollars each; *Provided*, the per cent. herein allowed does not amount to that sum, for performing the duties required of them by this act; and the auditor of public accounts is hereby authorized and required to issue his warrant in favour of such assessor, upon the territorial treasurer, for the amount, at any time after the list of taxable property of such county shall have been deposited in his office; and the territorial treasurer shall pay the same out of any moneys in the treasury not otherwise appropriated.

Tax collector to be appointed.

SEC. 9. *And be it further enacted*, That there shall be appointed by the governor, for each and every year, a fit person in each and every county within this Territory, a tax collector of

To give bond, Condition thereof. To be recorded. Copy may be evidence.

the same, who, before he enters on the duties of his office, shall enter into bond with good and sufficient security, to be approved of by at least three justices of the quorum, or of the peace, of the proper county, certified by such justices on the back of such bond, payable to the governor of the Mississippi Territory for the time being, and his successors in office, in the penalty of, to wit: For Adams county twelve thousand dollars; for Madison county, ten thousand dollars; and, for each of the other counties, six thousand dollars; conditioned for the faithful performance of the duties required of him by this act while in office. And the justice certifying the same shall cause the said bonds to be recorded in the office of the register of the orphans' court of their county, and shall thereafter transmit the said bonds respectively to the auditor of public accounts, to be by him safely kept in his office; and a certified copy of the record of the said bonds shall be good and sufficient evidence thereof, in case the original may be lost or mislaid.

To take oath.

Sec. 10. *And be it further enacted*, That the collectors respectively shall also, before they enter upon the duties of their office, take and subscribe the following oath, to wit: "I, A. B. do solemnly swear (or affirm) that I will to the best of my knowledge and abilities, perform the duties of collector of the taxes of the county of ——— without partiality, favour, or affection: So help me God."

Their powers and duties, after 1st July to make distress. Notice of sale, at court-house, &c. In case of land, how to advertise and sell. Sale thereof to be at court-house—to sell in lots not more than necessary.

Sec. 11. *And be it further enacted*, That the collectors of the several counties within this territory, shall have power, and are hereby authorized, from and after the first day of July in each and every year, to make distress and sale of the goods and chattels, lands and tenements of all delinquents who shall not have made payment to the collector, of the taxes due for that year: *Provided*, that notice of such sale shall have been given, by advertisement at the door of the court-house of the proper county, and at least two other public places within the county, at least ten days previous to the day of sale; where the distress shall be of the goods and chattels, and where the delinquent has no goods and chattels within the county, then, and in that case, the lands and tenements of said delinquent within the county, may be sold by the collector, or so much thereof as will be sufficient to satisfy and pay the amount of taxes due from such delinquent, together with all costs and charges accruing thereon. *Provided*, that the collector shall have given in the nearest newspaper published in this territory, in the case of residents within the same, at least three months notice; and in the case of non-residents, at least six months notice of the time and place of sale, previous to such sale; which notice shall contain a particular description of the land for sale; on what water-course it is, and by what lands the same is bounded; and to whom the same was granted, or by whom the same is now owned or claimed. And when real property is sold, the sale shall always be at the court-house of the proper county; and there shall not be sold in one lot more than three hundred and twenty acres of land: but, if

Commission on sale, and two dollars for deed.

Proviso. Land so sold may be redeemed by absentees; by persons under legal disabilities.

Receipt for taxes.

one lot shall not sell for the amount of taxes due from the delinquent, together with all costs and charges that shall have accrued thereon, the collector shall sell as many lots or parts of lots, as shall raise the full amount due; but, in no case shall the collector sell any more land than shall be sufficient to raise such sum as shall be due; and the collector shall be entitled to demand and receive from each delinquent whose property shall have been advertised, in addition to his other compensation for collecting the taxes, a commission of five per centum upon the amount raised or to be raised; and when the collector shall sell real property, two dollars for each deed of conveyance. *Provided*, that the persons, whose land may be sold for taxes under this act, shall have a right to redeem the same at any time within one year after such sale may be made, by repaying to the purchaser the amount by him paid, together with interest thereon at the rate of one hundred per cent. per annum from the day of sale until the money be paid: *And provided also*, that if the lands of any person under age, or insane, be sold, it shall be redeemable at any time within one year after such disability be removed, upon repaying the amount that the purchaser may have paid, inclusive of subsequent taxes paid on said land, with interest thereon at the rate of six per cent. per annum, until the time of redemption. And the collectors shall in all cases, upon receiving the amount of taxes due from any person, specify in the receipt for the same, the property taxed, and the total amount of taxes received.

Taxes to be preferred to all other incumbrances. Collectors may distress where persons about to move.

Taxes to be a lien on real property.

Sec. 12. *And be it further enacted*, That the taxes imposed by virtue of this act shall be preferred to all incumbrances and securities whatever; and if any person between the time of rendering a list of his taxable property to the assessor, and the time to which the collector is authorized to make distress, shall be about to remove without the limits of his county; the collector, upon receiving information thereof, shall immediately make distress of the goods and chattels of the person about to remove, sufficient to satisfy the amount of taxes that he may owe, and sell the same upon giving the notice herein before directed in the case of goods and chattels; and all taxes assessed on any person or persons under this act, shall be a lien upon his real property lying within the county in which the assessment was made, from the first day of January of that year.

Justices to hold court to certify insolvencies,

and relieve against improper assessments,

Sec. 13. *And be it further enacted*, That the justices of the quorum in each and every county within this Territory, shall on the second Monday in September in each and every year, hold at their court-houses respectively, a special court for the purpose of examining the amount of insolvencies that may be returned by the collectors of their respective counties, and shall certify such allowance as to them may seem fair and just, to the auditor of public accounts, who shall allow the same so certified, to the collector, in a settlement of his account. The said court shall further have power to grant relief to such persons as may have been improperly taxed, or overtaxed by the assessor; and upon certifying the same, as in the case of insolvencies, the auditor of public accounts shall allow the same to the collector in settlement of his account. And if any person to whom relief may be granted in the manner aforesaid shall not have paid the same to the collector, he shall be exonerated from the same; and if he shall have paid them, the collector shall refund the same amount to him; and the auditor at the time of settlement with the collectors respectively, shall suspend any proceedings against any collector for any amount of taxes due on lands that may be then advertised for sale, until after such day of sale.

and money to be refunded.

Auditor to suspend proceedings when land advertised for sale.

SEC. 14. *And be it further enacted*, That the collectors respectively throughout this territory, shall receive in payment of all taxes imposed by this act, any coin made current by the laws of the United States, or warrants issued by the auditor of public accounts, on the territorial treasurer, and bank notes of the following banks, to wit: the Bank of the Mississippi, the Planters', Louisiana, and Orleans Banks, and Nashville Bank.

What notes receivable in payment of taxes.

SEC. 15. *And be it further enacted*, That the collectors respectively shall pay into the territorial treasury, except the collectors of Madison, and the counties east of Pearl River, on or before the fourth Monday in October in each and every year, all moneys which shall be due from them respectively to the territory, as collectors for that year; and the collectors for the counties east of Pearl River and Madison shall pay the amount that they may respectively owe to the territory, into the territorial treasury on or before the second Monday in November in each and every year; and the collectors in each and every county within this territory (except the collector of Adams county) shall be entitled, upon a settlement of his account with the auditor of public accounts, to retain out of the amount by him collected, six per centum; and the collector of Adams county shall be entitled to retain six per centum on all sums by him collected up to and under two thousand dollars, and on all sums above two thousand dollars, and under four thousand dollars by him collected, five per centum; and for all sums above that amount by him collected, three per centum, and no more, as compensation for collecting the same.

Time limited for collectors to pay over money.

Their commission.

SEC. 16. *And be it further enacted*, That if any collector shall demand and receive of any person, more money than he shall be entitled to demand and receive under colour of his office, as collector, he shall forfeit to the party aggrieved, three times the amount of the same so extorted, recoverable in any court in this territory, having competent jurisdiction, together with costs.

Penalty on collector for extortion.

SEC. 17. *And be it further enacted*, That if any collector appointed under this act, shall fail to pay into the territorial treasury any money which may be due from him as collector, on or before the same may become payable by law, the auditor of public accounts shall immediately notify such delinquent collector and his security or securities, their executors or administrators, by advertisement published in some newspaper in this

On collector failing to pay over money. Auditor to proceed against him.

territory, that he will by the attorney-general (at the place where the supreme court shall by law be directed to be holden, on such day as shall be named in such notice) move the supreme court of the Mississippi Territory, for judgment against him or them, and his security or securities, and their executors or administrators, for the amount which shall be due from him or them to the territory, and the judges of the supreme court of the Mississippi territory, or any one of them, are hereby authorized and required to hold a special court for the purpose aforesaid, and to give judgment in a summary way without jury against such delinquent collector, or his executors or administrators, and his security or securities, for such sum or sums as shall appear to be due from him or them, and award execution accordingly; *Provided*, That such delinquent, or his executors or administrators, and his security or securities, have at least twenty days previous notice of such motion, in manner as aforesaid: *And provided also*, That when such delinquent collector, or his executor or executors, administrator or administrators, shall be resident east of Pearl River, or in Madison county, then, and in that case, the motion shall be made before the territorial judge of such county, at the place where the courts are usually held in such county, or if there shall be no such territorial judge in such county, then the motion shall be made before three justices of the quorum of such county; *Provided*, such delinquent collector, his executors or administrators, security or securities, have at least sixty days notice thereof, given in the manner aforesaid. And the said territorial judges, or justices of the quorum as aforesaid, are hereby authorized and required to hold special courts in their counties respectively in manner aforesaid, when, and as often as it may be necessary, and to grant judgments and award execution in the same manner as is herein prescribed in the case of the judges of the supreme court. And the clerks of the courts respectively, shall issue executions upon any judgments obtained in manner aforesaid, returnable to the next regular court, whether supreme, superior, or county court, and to endorse on said execution that no security of any kind is to be taken; and every sheriff or other officer to whom such execution may be directed, shall act accordingly.

Notice to collector.

Judgments and execution.

In case of death of assessor or collector, their executors or administrators to finish duties.

SEC. 18. *And be it further enacted*, That if any assessor or collector appointed under this act shall die after he shall have commenced the duties of his office, and before he shall have completed the same, his executor or executors, administrator or administrators, shall have full power to complete the business begun by such deceased assessor or collector, either by themselves, or to appoint some other person to do the same, and the said executor or executors, administrator or administrators, or such other person as may be appointed by them, shall have the same power to complete the business left unfinished by such deceased assessor or collector, as is by this act given to assessors and collectors, and the same may be completed at any time, after the time required by law, although the term of service of such collector or assessor may have expired.

When sued, may plead the general issue, &c.

SEC. 19. *And be it further enacted*, That if any assessor or collector, executor or administrator of any deceased collector or assessor, or any person appointed by any executor or administrator of any deceased assessor or collector, as, in this act directed to complete the unfinished business of such deceased assessor or collector, shall be sued for any matter or thing done in pursuance of the powers given in this act, he or they may plead the general issue, and give this act and the special matter in evidence, any thing in any law to the contrary notwithstanding.

Collector to make deed for real estate.

SEC. 20. *And be it further enacted*, That hereafter, every collector of the territorial or county taxes who shall sell any real estate to satisfy any tax imposed by lawful authority, shall execute to the purchaser or purchasers thereof a deed of conveyance immediately, which deed shall be good and effectual both in law and equity; and in every such deed, the collector making the same shall recite that the real estate thereby conveyed, was sold for taxes, and the consideration; but no deed given in manner aforesaid shall be recorded until the expiration of one year from the date thereof, but may nevertheless be proven, and if the person whose estate may have been sold and conveyed as aforesaid, or his or her heirs, executors or administrators, or his or her agent or attorney, shall within the year tender to the purchaser, his or her heirs, executors or administrators, or his or her agent or attorney, or in case of his, her, or their absence from the territory, then to the collector of the taxes who sold and conveyed such real estate, the consideration money paid for the same, and amount of all subsequent taxes that shall have been paid on such real estate, with interest thereon from the dates of such payments at the rate as stipulated in the eleventh section of this act, until such tender be made, and the deed given for such real estate thus sold and conveyed, shall be thereby vacated and made void, and the deed given up.

Not to be recorded under one year.

Land may be redeemed.

Property not assessed by assessor may be assessed by collector,

SEC. 21. *And be it further enacted*, That where the assessor appointed in virtue of this act may have omitted or neglected to assess any property taxable under this act, then, and in that case the collector for the proper county is hereby authorized to assess, collect, and pay over the tax or taxes thus collected, according to law: And that the annual reports of the auditor of public accounts and of the territorial treasurer, shall be made up to the first of November in each and every year.

and make report.

Persons removing after being assessed, how proceeded against.

SEC. 22. *And be it further enacted*, That when any person or persons liable to pay taxes, may, after being assessed, remove from the county in which he, she, or they may have been so assessed, not having paid their taxes, then and in that case the collector of the county in which he, she, or they may have been so assessed, may, and he is hereby required to send, certified under his hand, a transcript from his tax list to the collector of the county where such delinquent or delinquents may be, and the collector of such last mentioned county is hereby authorized upon such transcript to proceed to make the money by distress and sale, or otherwise, and immediately transmit the amount so made to the collector who sent the said transcript: for which services, the collector making the said money shall receive the compensation allowed by law for similar services.

Collectors exempt from militia duty.

SEC. 23. *And be it further enacted*, That hereafter, all tax collectors shall be, and they are hereby exempt from ordinary militia duty, but not from drafts.

Assessors and collectors to inquire who sell liquor without license.

SEC. 24. *And be it further enacted*, That it shall be the duty of each and every assessor and tax collector of the several counties within said Territory, or in case any of them should die before he shall have finished the duties of his office, the person who shall have power to complete the business commenced by such deceased assessor or collector, to inquire and ascertain as well as they can, the name or names of each and every person or persons within their respective counties, who shall retail any vinous or spirituous liquors without being licensed according to law, and give information thereof, with a list of the witnesses who can prove the same, to the attorney-general, at the commencement of each term of the superior court of his proper county, or to the nearest and most convenient justice of the peace of the county or corporation where such unlicensed person or persons hath committed the offence; and it shall be the duty of each and every clerk of each and every court within said territory, on application for the same, to furnish each and every assessor and collector of his proper county, a complete list of licensed retailers of vinous and spirituous liquors within such county, showing the commencement and end of such license.

Duty of clerks to furnish lists of persons licensed.

Repealing clause.

SEC. 25. *And be it further enacted*, That the act, entitled "An Act to raise a Revenue," passed the eighteenth day of December, eighteen hundred and nine; also the ninth section of the act, entitled "An Act providing a Tax for County Purposes, and to reduce the Territorial Taxes," passed the nineteenth day of December, eighteen hundred and twelve; also, an act, entitled "An Act to amend the several Acts concerning the Auditor of Public Accounts and Tax Collectors," passed the twenty-second day of December, eighteen hundred and twelve; and an act, entitled An Act to amend an Act, entitled "An Act to amend an Act to raise a Revenue," passed the twenty-third day of December, eighteen hundred and twelve; and so much of the second section of "An Act reducing the rate of Tavern Licenses, and for other purposes," passed on the second day of December, eighteen hundred and fourteen, as relates to the duty of assessors and tax collectors, and all other acts or parts of acts coming within the meaning of this act, be, and the same are hereby repealed.

CHAPTER X.

An Act to provide for assessing and collecting the Taxes of this State.—*Passed December* 17, 1821.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That there shall be appointed, on the fourth Mondays and Tuesdays of February, in each and every county in this state, a fit person to be an assessor and collector, by the judge of the county court, and the commissioners of the roads and revenue; and in case the assessor shall refuse to act, remove, or die, the judge of the county court shall make the appointment; and if there be no judge, the clerk of the county court shall make the appointment: *Provided, however,* That if a majority of the commissioners should not attend, by four o'clock on the second day, then and in that case the judge shall himself make the appointments.

Assessor and collector, when appointed.

By whom appointed.

Proviso.

Sec. 2. *And be it further enacted,* That each assessor and collector shall, before they enter upon the duties of their office, enter into bond and security, to be approved of by the judge of the county court, or if there be no judge, the clerk of the county court, payable to the governor for the time being and his successors in office, in the penal sum, in double the amount of the taxes of the county, to be estimated by the judge or clerk taking such bond, conditioned for the faithful performance of the duties required of him while in office; and the judge or clerk shall cause said bond to be recorded in the office of the clerk of the county court; and the clerk shall thereafter transmit said bond to the comptroller of the state, to be by him safely kept in his office, and a certified copy of the record of said bond shall be good and sufficient evidence thereof, in case the original shall be lost.

Assessor and collector to enter into bond.

Amount of bond.

To be recorded.

Transmitted to comptroller.

Sec. 3. *And be it further enacted,* That the assessors and collectors respectively, shall, before they enter upon the duties of their office, take and subscribe the following oath, to wit: "I, A. B. do solemnly swear (or affirm,) that I will, to the best of my knowledge and abilities, perform the duties of assessor and collector of the taxes of the county of ————, without partiality, favour, or affection: So help me God."

Oath to be taken.

Sec. 4. *And be it further enacted,* That from the first day of April to the first day of July, in every year, be, and the same is hereby established, as the time when the list of taxable property shall be given in, by all persons living in this state who are liable to pay taxes; which list shall contain an enumeration of the taxable property in his or her charge, within said county; and in the account of the lands, the particular description of the situation and quality of the same, and to what class it belongs; also each town lot of land with the dimensions of, and improvements thereon; also the amount of sales of all merchandise sold within the year ending on the first day of March immediately preceding the time, at which the assessors are herein directed to commence the duties of their office; and the assessor

Time when taxables to be given in.

Land, how given in.

Town lots.

Sales of merchandise.

shall state in the last column of his list, the total amount of the taxes due from each person chargeable with taxes. And all persons failing to make return of their taxable property as aforesaid, shall be deemed delinquents, and shall pay the assessor or collector fifty cents, as a compensation for having to go to the place of residence of such delinquent, for a list of his or her taxables, or the amount of taxes due from such delinquent: *Provided always*, That in case of sickness, or absence on business from the county, of any person having or owning taxable property, it shall be lawful for such person to send their list of taxables to the assessor and collector, sworn to before any justice of the peace in the state; or any person may render his list of taxables, sworn to by his agent.

Delinquents.

Proviso.

SEC. 5. *And be it further enacted*, That it shall be the duty of the assessors to advertise at three public places in each captain's district, at least ten days previous to the days herein established, for giving in taxable property: and it shall be the duty of the said assessors to attend at the muster ground in each captain's district, two days of the time of giving in the list of taxable property.

Assessors to advertise days of giving in taxables.

SEC. 6. *And be it further enacted*, That at the time of giving in to the assessor a list of taxable property, the person giving in the same, shall take the following oath or affirmation, to wit: "I, A. B. do solemnly swear (or affirm,) that the list of taxable property, which I have charge of, in the county of ————, subject to taxation, contains a true statement, to the best of my knowledge and belief: So help me God." Which oath, the assessor is authorized to administer to the person giving in the list.

Persons giving in property to take oath.

Assessor to administer oath.

SEC. 7. *And be it further enacted*, That the assessor shall make out three copies of his assessment, one of which he shall retain for his own use, one to be transmitted by him to the comptroller, on or before the first day of September, and one to be filed with the clerk of the county court; the copy for the comptroller shall first be submitted by the assessor to said county court clerk, to be compared, who shall certify thereon, that the said copy has been duly compared with, and is a correct duplicate of, that filed in his office. Any assessor failing to comply with the requisitions of this act, shall forfeit and pay the sum of one thousand dollars, recoverable in any court having competent jurisdiction; one half to the person suing for the same, and the other half to the use of the state.

To make out three copies of assessment.

How disposed of.

To be compared.

Clerk to certify.

Penalty on assessor for not doing duty.

SEC. 8. *And be it further enacted*, That the assessors and collectors in every county, appointed under this act, shall be entitled to receive at the rate of twenty-five per centum on the first four hundred dollars collected, and in proportion for a smaller sum; at the rate of twelve per centum, on all sums over four hundred dollars, and not exceeding one thousand; at the rate of seven per centum, on all sums over one thousand dollars, and not exceeding two thousand; at the rate of six per centum, on all sums over two thousand dollars, and not exceeding three thousand; at the rate of three per centum, on all sums over three thousand dollars: *Provided*, That the tax collector shall retain the per cent. attached to the sums respectively, for

Assessors' compensation.

Proviso.

all amounts collected; and the comptroller of the state is hereby authorized and required to issue his warrant in favour of such assessor and collector, upon the treasurer of the state, for the amount, at any time after the list of the taxable property shall have been transmitted to the comptroller, and shall have paid over to the treasurer the amount of taxes due.

Collector shall proceed to collect after 1st July.

SEC. 9. *And be it further enacted*, That the respective assessors and collectors shall proceed after the first Monday in July, in each and every year, to collect the taxes, and shall pay into the public treasury all moneys which may be due from them respectively, on or before the second Monday of December, in each and every year.

List of taxables to have force and effect of execution.

SEC. 10. *And be it further enacted*, That all lists of taxes shall be considered, as having the force and effect of an execution; and it shall be lawful for all assessors and collectors of taxes, from and after the first day of September in each and every year, to proceed to make distress and sale of the goods and chattels, lands and tenements, of all persons in arrear for taxes, in the same manner as now provided for by law.

All property in possession on the 1st day of March and after, liable to taxation.

SEC. 11. *And be it further enacted*, That every person shall be liable to pay taxes upon all property, both real and personal, of which he shall stand seized, or have in his custody, either as attorney, agent, guardian, executor, and administrator, subject to taxation under this act, on the first day of March in each and every year; and every person who shall sell and convey away any property, either real or personal, after the first day of March, shall give in a list of the same, with his, her, or their taxable property for that year.

Penalty for making false return of taxables.

SEC. 12. *And be it further enacted*, That if any assessor and collector shall make any false return of any list of taxable property, with a view to defraud the state or county of the revenue, he shall then and in that case, forfeit and pay double the amount of the sum which it was his duty to have returned, and shall moreover be liable to a prosecution for fraud, and on conviction thereof, shall be imprisoned not less than three months, by the verdict of a jury, and shall for ever thereafter be rendered incapable of holding any office of profit, honour, or trust, within this state.

Taxes heretofore accrued, may be collected.

SEC. 13. *And be it further enacted*, That all persons who may be appointed to collect the taxes of any county in this state, be, and the same are hereby authorized and empowered, to collect all arrearages of taxes that are now or may at any time hereafter remain unpaid, to the persons appointed to collect the same, under the same regulations as are prescribed for the collection of taxes in other cases.

Kind of money received for taxes.

SEC. 14. *And be it further enacted*, That the tax collectors, respectively, throughout this state, shall receive in payment of the taxes imposed by law, any gold or silver coin, or warrants issued on the state treasury of this state, or the bank bills or notes of such banks within this state, as pay specie for their notes, and all other bank bills or notes that may be received in the land offices of the United States for this state.

Governor to give notice to comptroller of banks that stop specie payments.

SEC. 15. *And be it further enacted*, That the governor of this state for the time being, shall, on receiving information which can be accredited, of the refusal, or stoppage, or failure, of any bank or banks either within or without this state, to pay specie for their bills or notes, emitted by such bank or banks, the said governor shall direct the comptroller of the treasury for the state, to issue circulars to the several tax collectors in this state, apprizing them respectively of such refusal, stoppage, or failure, on the part of such bank or banks, to pay specie as aforesaid, for the bills or notes emitted by the said bank or banks respectively.

Comptroller to issue circulars to collectors.

SEC. 16. *And be it further enacted*, That the assessor shall deliver to each individual whose property he assesses, a concise statement of the property assessed and the amount, which he shall date and sign.

Assessors and collector to receive compensation for duty performed.

SEC. 17. *And be it further enacted*, That if any accident should happen, that the person who shall be appointed to assess and collect the taxes should die, or otherwise be disqualified from performing the whole duties assigned him, then and in that case, the duties performed by the assessor and collector, shall be paid in proportion to the labour performed by each respectively.

Clerk failing to pay money for licenses.

SEC. 18. *And be it further enacted*, That if any clerk shall fail to pay the money arising from the tavern licenses by him issued, four weeks before the time the collector is required to settle his accounts at the treasury, he shall forfeit and pay double the amount of the tavern licenses by him collected; to be recovered by the collector before any court having jurisdiction thereof, and paid over by him to the state.

Penalty.

Assessor, when he may receive taxes.

SEC. 19. *And be it further enacted*, That it shall be lawful for any assessor to receive from any person the taxes due, and receipt for the same, at any time after said assessor shall enter on the duties of his office.

County court may instruct collector what kind of money to take for county taxes.

SEC. 20. *And be it further enacted*, That it shall be lawful for the judge of the county court and commissioners of roads and revenue in any county in this state, to direct the collector of the taxes to collect any current money circulating in their counties, in payment of county taxes, and the collectors shall collect according to such direction.

CHAPTER XI.

An Act to raise a Revenue for the Support of Government, until otherwise provided by Law.—*Passed December 27, 1822.*

Lands classed.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all lands in this state subject to taxation, shall belong to one class; the first quality of which shall be rated at sixteen dollars; the second quality at ten; the third quality at four; and the fourth quality at two dollars; and the owner or person subject to pay taxes for the same, shall, when he or she shall

Owner to give in on oath.

give in a list of his or her lands, state on oath, to which quality they believe his or her lands belong.

Amount of land tax.

SEC. 2. *And be it further enacted,* That the sum of ten cents for every hundred dollars value, be paid on all lands within this state, which have been cleared out of the land office, or to which a complete title has been obtained by the owner; and the tax on all lands purchased of the United States shall be proportioned to the number of instalments paid by the proprietor at the time of assessment, as well as to its class or quality; and if one instalment only be paid to the government, one-fourth only of the amount of tax accruing by the laws of the state on land of the same quality, shall be assessed or collected; and in like proportion, when a second or third instalment shall have been paid.

Tax on town property.

On merchandise.

Giving in the same on oath.

Slaves.

Free coloured.

White polls.

Carriages.

Tavern licenses.

Saddle horse.

Race horse.

Race track.

Stud and jack.

Neat cattle.

Billiard table.

Hawkers and pedlers.

Penalty.

Auction.

Watches.

Clocks.

Money at interest.

SEC. 3. *And be it further enacted,* That the sum of ten cents be paid for every hundred dollars value of all lands, lots, or buildings within any city or town, to be estimated by the person giving in the same, upon oath; thirty cents for every hundred dollars, on the amount of merchandise sold within the year immediately preceding the first day of January in each and every year, to be estimated by the owner, or in his absence, by the principal clerk, giving in the same on oath; and for every slave not exceeding ten years, twenty-five cents; and all over ten and under sixty, one dollar; for all free male negroes and mulattoes, over twenty-one years, one dollar; for all free white males above the age of twenty-one years, and not exceeding forty five, fifty cents; for all pleasure carriages and harness, one dollar on every hundred dollars of their estimated value, to be ascertained by the oath of the party giving in the same to the assessor; for every tavern license, or leave to retail spirituous liquors, ten dollars; for every horse kept exclusively for the saddle or pleasure carriage, one dollar; and for every race-horse, five dollars; for every public race track, twenty dollars; for every stud-horse or jackass, the amount for which said stud or jack may stand by the season; and all neat cattle which may be owned by any one citizen of this state, and for every head of neat cattle owned by any person not a citizen freeholder of this state, over twenty-five head, work oxen excepted, per head, four cents; for every billiard-table kept for play, one thousand dollars; for each license granted to every hawker or pedler, in each county, twenty dollars; and in case any hawker or pedler shall sell any goods or merchandise, without first taking out license and paying for the same, agreeably to the provisions of the law, he shall forfeit and pay the sum of fifty dollars, to be recovered in any court having competent jurisdiction, one half to the use of the state, and the other half to the use of the informer; on all goods sold at auction, other than those which are exempted by law, two per centum on the amount of sales; for every gold watch kept for use, one dollar; for every silver or other watch, kept for use, fifty cents; and for every clock, kept for use, one dollar; for money loaned at interest, for every hundred dollars, twenty-five cents; on every pack of playing cards sold, given away, or otherwise disposed of, fifty cents.

Tavern licenses in towns or cities.

In the country.

To whom paid.

SEC. 4. *And be it further enacted*, That for every tavern license in any city or town, there shall be paid as tax, twenty dollars; for keeping a house of public entertainment in any city or town, without retailing spirituous liquors, fifteen dollars; on every retailer of spirituous liquors in any city or town, ten dollars; on every retailer of spirituous liquors in the country, or on the road or highways, without keeping accommodations for man and horse, five dollars; and on all houses of public entertainment on the roads and highways, retailing spirituous liquors, five dollars; which tax shall be paid to the clerk issuing the license, and by him, immediately, to the tax collectors; and the clerk shall receive for his services, the fees heretofore allowed for issuing licenses; and no county tax shall be paid on licenses, except such as may be levied by the county court of such county.

Tax on bank shares.

Proviso. Bank not paying specie.

Cashier to retain and pay into treasury.

At what time. Penalty.

How proceeded against.

SEC. 5. *And be it further enacted*, That on all shares of bank stock in any bank in the state, held by any individual, partnership, or body corporate, there shall be levied and collected, yearly, a revenue at the rate of fifty cents on each share of one hundred dollars: *Provided nevertheless*, That if any bank in this state shall refuse to pay specie for their notes after the first day of August next, then and in that case, there shall be levied and collected an additional tax of fifty cents on each share held as aforesaid in any bank or banks so refusing to pay specie for their notes; and the president and directors, or cashier, on making out their last dividend for each preceding year, shall return the said amount of taxes, and pay the same into the treasury of this state, and shall produce the treasurer's receipt, on or before the first day of January in every year; and on failure thereof, the president and directors of said bank, or any number of them in their corporate capacity, shall pay to the state ~~two~~ thousand dollars; and in case of any such failure, it shall be the duty of the comptroller of public accounts, to direct the solicitor of the circuit in which such defaulting bank or banks may be, to proceed to the recovery of the same, on motion in the circuit court; the said comptroller of public accounts giving notice in the Cahawba Press to the said defaulting bank, or banks, of motion so to be made, and the certificate of said comptroller shall be deemed and taken as full and sufficient evidence of such default or failure.

Lands sold previous to Sept. 1819, not given in, double taxed.

SEC. 6. *And be it further enacted*, That when the time shall have expired, within which the lists of taxable property are to be received, it shall be the duty of the assessor of taxes to ascertain whether there be any lands or town lots within their respective counties, sold under the authority of the United States, previously to the first day of September, one thousand eight hundred and nineteen, which have not been assessed; and in case any such be found, which have not been forfeited, he shall assess the same according to the rate of assessment prescribed by law on town lots and lands for which a complete title has been obtained, and such lots or lands shall be double taxed.

SEC. 7. *And be it further enacted*, That the collectors of taxes in the several counties shall, at the time and in the manner prescribed by law, make distress and sale of the goods and chattels, lands and tenements of all delinquents in making return of taxable property, or in payment of taxes: and in case of taxes assessed in the manner directed in the preceding section on lands or town lots, to which a complete title has not been obtained, and in which other property, sufficient to satisfy the taxes due, together with all costs and charges accruing thereon, cannot be found, it is hereby expressly made the duty of the respective collectors of taxes, to give notice by advertisements, at the door of the court-house of the proper county, and at two other public places within the county, that on a certain day (which shall be at least thirty days after the date of each advertisement) he shall at the court-house of his county, offer for rent the town lot or lots, or so much of the land (as the case may be,) and for such term as may be necessary to satisfy the taxes due, and costs and charges thereon; and he shall accordingly offer for rent to the highest bidder, until the first day of January succeeding the January immediately ensuing, the town lot or lots, or such portion of the lands (as the case may be,) as he may designate, beginning in the case of lands with ten acres, or with as much less than ten acres as may be necessary to pay said tax and costs, or by adding ten thereto as often as may be necessary to obtain by such rent a sufficient sum to satisfy taxes and costs; and in case the town lot or lots, or lands, cannot be rented for a sufficient sum on the terms aforesaid, they shall be offered for two years from the first day of January immediately ensuing, or until a complete title to the same shall be produced, or the same shall be forfeited to the United States: *Provided*, that the production of a complete title shall in every case aforesaid, entitle the owner to the possession of the premises, upon reimbursing the amount paid for taxes, and the charges thereon, to the party by whom such payment has been made, and saving to the occupant the crop which may be on the premises: and should the rent in any case exceed the amount of taxes and charges, the right owner of the town lot or lots, or lands, (as the case may be,) shall be entitled to receive the overplus.

Delinquents, collectors may sell property.

Collector to give notice.

Term of rent.

Proviso.

SEC. 8. *And be it further enacted*, That the collectors of taxes respectively, shall, by an instrument of writing convey to the party renting the premises as aforesaid, the use thereof for and during the time for which they were rented, and shall in addition to the compensation allowed by law, be entitled to receive one dollar, for executing every such instrument of writing; and such instrument conveying the use of the premises as aforesaid shall be good and sufficient both in law and equity: *Provided*, that whenever the collector shall find the tenant in possession, who may refuse to pay the tax, or render possession of the premises which may be thus taxed and unpaid, he shall have full power to proceed *instanter*, in the same manner as is or may be authorized in cases of forcible entry and detainer; and the

Collectors to convey.

Proviso.

refusal of the tenant in possession to render peaceable possession of the premises, on demand, shall be considered as evidence of forcible detainer.

Collectors to make deed.

SEC. 9. *And be it further enacted,* That the tax collector shall be authorized, and is hereby required to convey by deed, any land he may sell under the provisions of this act, where a complete title has been obtained: *Provided,* the owner or owners of any lands sold for taxes, may redeem the same at any time within twelve months, by the proper owner or owners, or their agents, paying the amount of tax and costs paid by the purchaser, with interest at the rate of fifty per centum, per annum, from the day of sale, until said redemption and costs.

Proviso. Lands redeemable.

Tax on exhibitions.

SEC. 10. *And be it further enacted,* That every person who shall exhibit or cause to be exhibited for hire or emolument, any museum, wax-works, feats of activity, slight of hand, or plays, shall first obtain from the clerk of the county court of the county where the same may be exhibited, a license authorizing the same, for which the party applying shall pay to the clerk twenty dollars for the use of the state, together with one dollar as a fee to the clerk, for issuing the same; and the clerk shall account for the said tax, in the same manner as he is required to account for taxes collected on retail and tavern licenses: and every person who shall exhibit as aforesaid, without first obtaining such license, shall forfeit and pay the sum of fifty dollars, to be recovered before any justice of the peace, at the suit of said clerk, or any other person in the name of the said clerk; which sum so recovered shall be paid over as aforesaid, after deducting therefrom ten dollars for the use of the person who may sue as aforesaid.

Amount of tax.

Penalty.

Stud horses, &c.

SEC. 11 *And be it further enacted,* That stud horses and jackasses, shall be taxed from and after the first day of April, and the assessor shall take the list of those articles in relation to that day; and it shall be the duty of the collector of the revenue to collect the tax on all jackasses and studhorses which have stood the season in their respective counties, whether they have been listed with the assessor or not, and account for the receipts as other taxes.

Persons make returns.

SEC. 12. *And be it further enacted,* That if any person shall remove from the county in which he may reside, after the first day of April next, without returning to the assessor a list of his taxable property, then and in that case, he shall return to the assessor of the county to which he shall remove, a list of his taxable property.

Penalty on billiard table.

SEC. 13. *And be it further enacted,* That if any person or persons shall by him or themselves, or by his, her, or their agent keep a billiard table for play, without first obtaining a license from the county court in which said table may be kept, he, she, or they, shall forfeit and pay the sum of two thousand dollars; to be recovered in any court having jurisdiction thereof, one half to the person suing for the same, the other half to the state: *Provided,* that all town property shall be valued by the assessor, where the owner of such property refuses to give in the same upon oath.

Proviso.

SEC. 14. *And be it further enacted*, That no collector shall be authorized to collect any tax until the assessment shall have been completed, and a list thereof returned to the clerk of the county court of his county. Taxes collected.

TREASURY DEPARTMENT.—1803.

CHAPTER I.

An Act creating the Offices and defining the Duties of Territorial and County Treasurers.*—*First Passed in* 1803.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That there shall be appointed and commissioned by the governor, from time to time, one treasurer for the territory, under the title of territorial treasurer; who shall keep his office at the place designated by law, for the sitting of the general assembly; and shall be allowed fifty dollars a year for office rent. There shall likewise be appointed one treasurer in every county, under the title of county treasurer; who shall each, severally, prior to entering upon the duties of his office, take and subscribe an oath of office, and give bond with sufficient sureties; the territorial treasurer in the penal sum of twenty thousand dollars; and the county treasurers in the penal sum of five thousand dollars; each payable to the governor of the Mississippi territory, and his successors in office. Treasurers to be appointed.

SEC. 2. *And be it further enacted*, That the condition of the territorial treasurer's bond shall be in the words, or to the effect following, to wit: "The condition of this obligation is such, that if the above bounden ——— ———, shall from time to time, and at all times, render a just and true account, to the legislature of the Mississippi territory, when by them thereunto required, of all the moneys, securities, stock, and other property of the said territory, which shall come to his hands, or be committed to his charge; and deliver the moneys, securities, stock, and other property of the said territory, in his hands, together with all documents, instruments of writing, papers and books belonging to, or for the use of the said territory, to his successor in office; and shall well, honestly, and faithfully perform all the duties of his office; and shall answer for all improper appropriations, waste, embezzlement, or destruction of the said moneys, securities, stock, property, documents, instruments of writing, papers or books, which shall be done or committed by any person or persons, to be by him employed in the said office; then this obligation to be void, otherwise to be and remain in Bond of the territorial treasurer.

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* The act of 1819 provides, that the comptroller shall perform the duties and be subject to the responsibilities of the former auditor: and that the state treasurer shall perform the duties and be subject to the responsibilities of the territorial treasurer.

full force and virtue." Which bond shall be executed before the governor, and with the oath thereon endorsed; filed in the office of the territorial secretary.

County treasurer's bonds.

SEC. 3. *And be it further enacted*, That the condition of the bond of the county treasurer shall be the same as that of the territorial treasurer; changing therein the words "Legislature of the Mississippi Territory," into "County Court;" and the word "Territory" into "County;" which bond shall be executed before two justices of the peace, and with the oath thereunto endorsed, filed in the office of the clerk of the court of the county wherein he is appointed.

Adjustment of accounts when out of office.

SEC. 4. *And be it further enacted*, That if any treasurer die, resign, be discharged, or cease to hold his office; then such treasurer, or if he be dead, his heirs, executors, or administrators, shall fairly and regularly state the account, and deliver the moneys, securities, stock, property, instruments of writing, and books of the territory, or county, in his possession, to the succeeding treasurer; who if a territorial treasurer, shall make report thereon to the legislature; or if a county treasurer, to the county court: and the said report, if confirmed by the legislature or county court, shall be a discharge of the late treasurer's bond; which in such case shall be delivered to the said treasurer, or his heirs, executors, or administrators.

Duty of the treasurers.

SEC. 5. *And be it further enacted*, That it shall be the duty of the said treasurers to receive and keep the moneys of the territory or county, for which they are appointed; to disburse the same agreeably to law, and take receipts for all moneys which they shall pay; to keep accounts of the receipts and expenditures of the public money, and in case of county treasurers, to keep accounts of all debts due to or from the counties respectively, for which they are treasurers; and direct prosecutions for debts that are or shall be due to the county, for which they are appointed. And for this purpose they shall be furnished by the clerks of the several courts of justice respectively, once in every year, with authenticated extracts from the records and dockets of their respective courts, of all fines, forfeitures, amercements, escheats, judgments, and orders, entered into such courts, whereby moneys may be accruing or arising to the use of the counties respectively. And if any clerk as aforesaid, shall neglect his duty herein, he shall be liable to pay a fine to the use of the county, in the discretion of the court where tried, not exceeding two hundred dollars, to be levied by complaint of any county treasurer, or of any attorney-general; and on conviction thereof had in any court of competent jurisdiction.

Territorial treasurer to make reports to the legislature.

SEC. 6. *And be it further enacted*, That it shall be the duty of the territorial treasurer to make reports and give information to the legislature of this territory; or in their recess, to the governor, in person, or in writing, as he may be required, respecting all matters referred to him, or which shall in any wise appertain to his office; and generally to perform all such services relative to the finances as he shall be directed to perform. And it shall moreover be his duty to prepare and lay before the general assembly, at the commencement of each annual session thereof, a report on the subject of finance, containing estimates of the public revenue and public expenditures, for the purpose of giving information to the general assembly, in adopting modes for raising the money requisite to meet the public expenditures.

The county treasurers to make reports to the county courts.

SEC. 7. *And be it further enacted*, That it shall be the duty of the county treasurers respectively, to make reports and give information to the county courts of the counties wherein they are appointed, in person, when thereunto required, respecting all matters in any wise belonging to their offices, and generally to perform all such services relative to the finances of the counties, as they shall be directed to perform.

Treasurer's accounts, how to be kept.

SEC. 8. *And be it further enacted*, That it shall be the duty of the said treasurers, and every of them, to state in fair books, the amount of moneys which they shall receive for taxes, impositions, debts, fines, penalties, forfeitures, or any other account whatsoever, for, or in behalf of this territory, or of the county in which they are respectively appointed: and which they shall pay in pursuance of acts of the legislature, in such manner as that the net produce of the whole revenue, as well as of every branch thereof, and the amount of disbursements, in payment of the several demands, may distinctly appear; and the territorial treasurer shall, from time to time, lay the same and all other his proceedings, relative to his office, before the legislature: and each of the county treasurers shall, in like manner, lay the same, from time to time, and all other their proceedings, relative to their office, before the county court of the county wherein they are appointed.

CHAPTER II.

An Act for the Appointment of an Auditor of Public Accounts, ascertaining his Duties in Office, and for other purposes.—*Passed March* 1, 1806.

Oath and bond of the auditor.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That there shall be appointed, by the governor of this territory for the time being, an auditor of public accounts, who, before he shall be qualified to act, shall take an oath, impartially and honestly to discharge the duties of his said office, and shall give bond, with two or more sufficient securities, payable to the governor for the time being, and his successors in office, in the penal sum of five thousand dollars, conditioned for the faithful discharge of the duties of the said office. The said auditor shall keep his office in the place designated by law for the sitting of the general assembly; and shall be allowed the sum of fifty dollars a year for office rent.

His duties.

SEC. 2. *And be it further enacted*, That it shall be the duty of the said auditor to examine, state, settle, and audit all accounts, claims, or demands whatsoever, against the territory, arising under any law or resolution of the legislature; and to grant to every claimant, authorized to receive the same, a warrant on the territorial treasurer, under his hand and seal of office; making due entry and register of all his proceedings, in a book to be kept for that purpose; and carefully arranging, filing, and preserving in his office, all accounts, receipts, vouchers, and papers touching the same; to examine, settle, and audit the accounts of all public debtors, collectors of any tax or revenue, levied by act of the legislature; and payable to the territorial treasurer; to call upon all such debtors, to render accounts, and pay into the treasury all sums and balances due: and on their failure so to do, to institute proceedings against them at law, to require information on oath from any person, party, or privy, of any matter relative to any account under his examination, and material for his information; to state and keep the accounts, so as to show the amount of all warrants by him drawn on the treasurer, for what services or articles of public expense they were given; and to lay before the general assembly annually, and as often as thereto required, the general accounts, together with an account of all balances due to and from the territory.

To furnish forms and regulate and examine books and accounts.

SEC. 3. *And be it further enacted*, That it shall be the duty of the said auditor to decide on the official forms of all papers to be issued for collecting the public revenue, and the manner and form of keeping the accounts of persons employed therein: and the books and accounts of the treasurer and all other persons concerned in the collection and safe-keeping of the public moneys or funds of this territory, shall at all seasonable times, be open to the examination and inspection of the said auditor.

No moneys to be paid but on warrants.

SEC. 4. *And be it further enacted*, That it shall not be lawful for the territorial treasurer to pay or receive any public money but on warrant or certificate from said auditor, who shall begin on the first day of January annually, and number each warrant for the payment of money, beginning at number one, and continuing progressively until the last day of December following, inclusively.

Of claims antecedent to 1st of April, 1806.

SEC. 5. *And be it further enacted*, That the said auditor shall open his office on the first Monday in April next: he shall keep books for the registry of all legal debts and demands, of every denomination, kind, or nature soever, for which any person or persons hold any warrants or certificates, issued by lawful authority, before the said first day of April next, and chargeable on the territorial treasury, or the county treasury of any county in this territory, and file and preserve in his office the warrants and certificates so taken up; and where any warrant or certificate shall appear to have been issued by any particular county, and chargeable on the same, the said auditor shall deliver to the owner or bearer of such warrant or certificate, a certified copy thereof; which certified copy shall authorize him or her holding the same, to draw the amount specified therein out of the treasury of the proper county: and where the demand shall appear to be of a general nature, and against the territory; of which description shall be considered all debts and demands, which have been incurred for apprehending, securing, supporting, or prosecuting criminals within this territory, as well as all other demands where the territory generally is concerned; the said auditor shall issue his warrant on the territorial treasurer in favour of the holder or bearer, for the amount called for, in any such warrant or certificate: and the said books shall be kept open for the purpose aforesaid, until the first day of November next: and any person who shall refuse or neglect to exhibit such debt or demand into the office of the auditor, on or before the first day of November next, shall from and after that day be for ever barred and excluded as a creditor of this territory, or of any county therein; and it shall be the duty of the said auditor to report and state to the legislature at their first session next succeeding the said first day of November, the nature and extent of the said claims. It shall be the duty of each county treasurer to state to the said auditor, on or before the said day, the amount of all taxes theretofore assessed and collected in his county, and all moneys that may have come into his hands as treasurer, and the disbursements thereof; which accounts and statements the said auditor shall also report to the legislature of this territory.

Mode of auditing county claims.

SEC. 6. *And be it further enacted*, That the justices of the county court of each county, (the chief justice of the orphans' court being one,) shall in term time audit and allow on due proof, all accounts and demands legally chargeable upon their respective counties: and every account, or such part, and so much thereof as is so allowed, shall be recorded by the clerk in a book to be kept for that purpose; and the claimant shall receive a warrant on the county treasurer, signed by the clerk for the amount so allowed: and the clerk shall number the warrants issued as aforesaid, in each year, beginning in the term first held in each year, and progressing through the same in numerical order; and register the number and amount of each warrant in the aforesaid book; and transmit to the auditor of accounts, annually, the numbers, amounts, and names of claimants of all such warrants, and an abstract of the items or services for which the said warrants were issued; and the result of the said account shall be entered in the auditor's books; and the account thereof laid before the legislature, annually, with his other accounts.

[SEC. 7. Fixed the salary, but is superseded by the laws of the state.]

Seal of office.

SEC. 8. *And be it further enacted*, That the said auditor shall procure a seal of office; the legend of which shall be, "Mississippi Territory, Auditor's Office." Also all books and stationary necessary for the use of his office, and the accounts for the said seal, books and stationary, shall be audited and paid to the said auditor, by the territorial treasurer, without warrant; and the said seal and books shall appertain to the said office, and be delivered over by the said auditor, his executors or administrators, to his successor.

CHAPTER III.

An Act more particularly to define the Duties of the Auditor of Public Accounts, and Territorial Treasurer, and for other purposes.—*Passed February 6*, 1807.

Under what restrictions auditor to issue his warrant.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That no warrant shall ever hereafter be issued by the auditor of public accounts, until after provision has been made by law for the allowance or pay of such demand.

To draw special warrants.

SEC. 2. *And be it further enacted*, That it shall be the duty of the auditor of public accounts, to draw special warrants on the territorial treasurer, when he shall be thereto required, for all moneys of whatever amount, which by law are directed to be paid out of the territorial treasury, but by special warrant; which warrant shall express on what particular account such money is due by the territory. And it shall be the duty of the territorial treasurer to examine whether such warrant has been issued agreeably to law, before he shall pay the same, and after making due examination, if he shall find such warrant has been issued agreeably to law, he shall pay such warrant to the person legally entitled to receive the same, taking his or her receipt thereon; and shall also make a proper entry in his books, of each and every such warrant, and shall keep the same regularly filed in his office: and it shall be the duty of the auditor to take a receipt for every warrant so issued by him, and to keep the same regularly filed in his office.

Treasurer's duty.

Repealing clause.

SEC. 3. *And be it further enacted*, That all laws, or parts of laws, which come within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER IV.

An Act respecting the Auditor of Public Accounts and the Territorial Treasurer.—*Passed December* 23, 1809.

[SEC. 1. Fixes the salary of the auditor and treasurer; has been repealed.]

SEC. 2. *And be it further enacted*, That from and after the passing of this act, the auditor of public accounts shall not issue any warrant upon any allowance made to or claim in favour of any person, his agent or assignee, who may be a debtor to the territory, but shall allow such person a credit on his account for such allowance or claim.

SEC. 3. *And be it further enacted*, That it shall be the duty of the auditor of public accounts, to render to the territorial treasurer, monthly, an account of all warrants that shall have been issued by him on the territorial treasurer during the preceding month.

CHAPTER V.

A Resolution relative to Tax Collectors.—*Passed December 23, 1809.*

Whereas the legislature of this territory have heretofore passed several laws authorizing the assessment and collection of county taxes for special purposes; and in some cases, such taxes have exceeded the amount required for the purposes for which such laws intended to provide: Therefore,

Be it resolved by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, That all surplusses of money that are now due from any collector of any special county tax, or that may arise hereafter, under any law providing for a county tax for a special purpose, after full payment of all appropriations arising under any law raising a special county tax, shall be for general county purposes, and shall by the collector be paid over to the county treasurer of the proper county, and on failure to do so, the county treasurer of the proper county shall have the same mode of recovering any surplus arising as aforesaid, as is given them respectively against collectors of general county taxes, any law to the contrary notwithstanding.

CHAPTER VI.

An Act to amend an Act, entitled "An Act for the Appointment of an Auditor of Public Accounts, ascertaining his Duties in Office, and for other purposes." —*Passed December 3, 1810.*

NOTE.—The whole of this Act is repealed or obsolete but Section 5.

SEC. 5. *And be it further enacted,* That when any allowance shall be made by any court, to any of its officers, or any other person, the clerk of such court shall make out a fair copy of such account thus allowed, and a certificate of such allowance, and recite therein under what statute it was made; and if the auditor of public accounts shall have doubts of the propriety of any such allowance made as aforesaid, he shall not be authorized to issue his warrant therefor on the territorial treasury, but shall report the same to the General Assembly at their next session, and the courts shall not be authorized to make any allowance unless authorized to do so, under some statute of the territory.

CHAPTER VII.

An Act to amend an Act, entitled "An Act more particularly to define the Duties of the Auditor of Public Accounts and Territorial Treasurer, and for other purposes."—*Passed December 18, 1811.*

Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, That the first section of the act, entitled "An act more particularly to define the Duties of the Auditor of Public Accounts and

Territorial Treasurer, and for other purposes," shall not be so construed as to require appropriation to be made by the legislature before the auditor issues warrants on the territorial treasury, for any sum or sums certified to him agreeably to law.

CHAPTER VIII.

An Act to amend an Act creating the Offices, and defining the Duties of Territorial and County Treasurers, and for other purposes.—*Passed December* 18, 1811.

Territorial treasurer to give bond.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That within one month after the passage of this act, the territorial treasurer shall give bond, with at least two good and sufficient securities, payable to the governor of this territory, for the time being, and his successors in office, in the penalty of sixty thousand dollars, conditioned for the true and faithful performance of his duties as territorial treasurer.

County treasurers to make returns.

SEC. 2. *And be it further enacted,* That county treasurers shall make returns to the county courts of their respective counties, of their accounts for settlement, at least once in each and every year, and in case of failure, shall be fined in a sum not exceeding two hundred dollars, recoverable in any court of competent jurisdiction within this territory, for the use of the proper county.

To examine the accounts, dockets, and records of clerks and sheriffs.

SEC. 3. *And be it further enacted,* That the county treasurers are hereby empowered and required to examine the accounts, dockets, and records of the clerks and sheriffs of their counties, for the purpose of ascertaining whether any moneys, of right belonging to such county, may be in their hands, and to use all lawful ways and means to recover from all and every person holding in his hands any money belonging to his proper county.

Legal tender.

SEC. 4. *And be it further enacted,* That all warrants issued by the auditor of public accounts, on the territorial treasurer; all notes issued by the Mississippi bank, the Planters' bank, and the Louisiana bank, shall be a legal tender in payment of all dues to the territory, whether of taxes, fines, or otherwise.

Claims due from counties to individuals revived.

SEC. 5. *And be it further enacted,* That all claims, which are due from any county within this territory, to any individual or individuals, and which have been duly audited by the auditor of public accounts, by the proper county court, or by any other legal authority, but which may have been barred by law, shall be revived and made valid against the proper county, any such law to the contrary notwithstanding.

Repealing clause.

SEC. 6. *And be it further enacted,* That all acts, and parts of acts, coming within the meaning and purview of this act, be, and the same are hereby repealed.

CHAPTER IX.

Resolution directing the Territorial Treasurer to perform certain Duties.—*Passed December* 27, 1814.

Resolved by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, That it shall be the duty of the territorial treasurer to endorse on the back of all receipt warrants the amount of gold and silver, and the amount of notes on each bank, received by virtue of said warrants the sum and kind of money paid on the same.

Territorial treasurer required to make certain endorsements on warrants.

CHAPTER X.

A Joint Resolution authorizing the Governor to draw upon the State of Mississippi for any Moneys due the Alabama Territory.—*Passed February* 3, 1818.

Resolved by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened, That the governor be, and he is hereby authorized to take such measures as he may deem most proper for the purpose of ascertaining and receiving from the proper authorities the amount of moneys to which the Alabama Territory may be entitled, by virtue of the provision contained in the ninth section of the "Act of Congress, establishing a separate Territorial Government, for the Eastern part of the Mississippi Territory;" as also all such public acts, papers, or documents, or authenticated copies thereof, now in the office of the secretary of the state of Mississippi, as have relation to this territory, and which may be considered important; and any expenses which may be incurred in carrying into effect this resolution, shall be paid out of the contingent fund, or any other moneys in the treasury not otherwise appropriated, on the certificate of the governor.

Governor is authorized to take measures to ascertain the amount of money to which the Alabama territory is entitled.

Expenses to be paid out of the treasury.

CHAPTER XI.

Extract from "An Act prescribing the Duties of certain Public Officers." *Passed December* 17, 1819.

SEC. 6. *And be it further enacted,* That the state treasurer shall perform the duties, and be subject to the responsibilities heretofore appertaining to the office of territorial treasurer.

CHAPTER XII.

An Act to amend the several Acts relating to Assessors and Collectors of the Public Revenue.—*Passed December* 17, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall be the duty of each and every assessor, in addition to the duties now imposed on them by law, to post up, at the

Assessor to post up a list of taxable property court-house door in his county, on or before the first day of June, in each and every year, a complete list of all taxable property by him assessed, together with the names of the persons chargeable with taxes thereon, and the amount of the taxes due from such person; and he shall, in all other respects, proceed in the assessing of taxes, and the list to be made thereof, as are now prescribed by law.

Collector to pay moneys into the treasury.

Penalty for neglect.

Sec. 2. *And be it further enacted*, That the collectors of public taxes, in each and every county, shall pay into the public treasury all moneys which shall be due from them respectively, on or before the first Monday in October, in each and every year; and if the collector shall fail to pay into the state treasury any money which may be due from him as collector, on or before the same may become payable by law, it shall be the duty of the comptroller of public accounts, and he is hereby directed, immediately to notify such delinquent collector, his security or securities, their executors or administrators, by advertisement, published in some newspaper, printed at the seat of government, that he will, by the attorney-general, on such day as shall be named in such notice, move the supreme court of the state for judgment against him or them, and his security or securities, for the amount due to the state; and the judges of the supreme court of the state, or any one of them, are hereby authorized and required, to hold a special court, if necessary, and to give judgment in a summary way, without jury, against such collector, or his executors and administrators, and his security or securities, and award execution accordingly.

CHAPTER XIII.

An Act appointing an Agent to receive the Three per Cent. Fund.—*Passed December* 31, 1822.

State treasurer appointed agent.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the treasurer of this state be, and he is hereby appointed an agent on the part of the state of Alabama, to receive of the treasurer of the United States, or from such person or persons as may be appointed for that purpose, the whole, or any part of the three per cent. of the nett proceeds of sales of lands made in this state, since the first day of September, eighteen hundred and nineteen.

Treasurer's receipt valid.

Sec. 2. *And be it further enacted*, That the treasurer of this state is hereby authorized and required, to give a receipt or receipts, as treasurer, for so much of said fund as may be by him received; and the receipt or receipts so given, shall be binding on this state for the amount so received.

CHAPTER XIV.

An Act for the Regulation of Assessors and Collectors, so far as relates to the Payment of Money.—*Passed December* 31, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That if any collector of taxes in this state, shall fail to collect and pay over the county tax within the time prescribed by law, it shall be the duty of the judge of the county court to hold a special court to try such delinquent collector; and if it shall appear, that he has so failed to collect or pay over such county tax, it shall be the duty of the judge, on motion of the county treasurer, to enter up judgment against such collector, and his security or securities in office, for the amount of said county tax so due and unpaid, together with fifteen per centum as damages on the amount: *Provided hrwever,* That ten days notice, at least, shall be given to such delinquent collector, and his security or securities.

Collectors not paying over county taxes, how proceeded against.

Proviso.

CHAPTER XV.

An Act to extend the Time of Payment, and receive a certain Sum of Money, due to this State from John M. Taylor.*—*Passed January* 1, 1823.

CHAPTER XVI.

An Act for the Relief of Edmund Freeman, late Tax Collector of Baldwin County.*—*Passed January* 1, 1823.

CHAPTER XVII.

An Act to authorize the Treasurer of the State to receive a Sum of Money therein specified.*—*Passed December* 31, 1822.

CHAPTER XVIII.

An Act for the Relief of the Tax Collectors of the Counties of Mobile and Franklin.*—*Passed December* 14, 1822.

CHAPTER XIX.

An Act for the Relief of the Tax Collector of Lawrence for the year 1821.*—*Passed December* 30, 1822.

CHAPTER XX.

An Act for the Relief of certain Tax Collectors therein named.*—*Passed December* 31, 1822.

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* The foregoing being merely temporary are omitted.

CHAPTER XXI.

An Act to provide for the Payment of the Compensation allowed by Law to the Commissioners appointed to lease the Lands belonging to the University of Alabama.—*Passed December* 31, 1822.

NOTE.—This Act will be found inserted under Title 41, Chapter 27.

CHAPTER XXII.

An Act for the Relief of Robert Coyle.*—*Passed December* 24, 1822.

CHAPTER XXIII.

An Act for the relief of David White.*—*Passed November* 30, 1822.

CHAPTER XXIV.

A Resolution requiring the Tax Collector of Madison County to pay into the Planters' and Merchants' Bank of Huntsville, a certain sum, when directed by the Comptroller to do so.—*Passed January* 1, 1823.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That the tax collector of Madison county for the year eighteen hundred and twenty-two, be, and he is hereby authorized and required to pay into the Planters' and Merchants' Bank at Huntsville, such sum of money, as he may be directed by the comptroller, for the purpose of completing the payment of the balance due from this state to said bank.

CHAPTER XXV.

* Resolution for the Relief of Matthew D. Thomason.—*Passed January* 1, 1823.

CHAPTER XXVI.

Resolutions concerning the Loan from the Tombeckbee Bank.—*Passed December* 31, 1822.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That his excellency the governor be, and he is hereby authorized to continue the loan already made from the Tombeckbee bank, the ensuing year, to aid the credit of the treasury notes, on the same terms and conditions as heretofore prescribed by law; and that the sum of one hundred and fifty dollars be appropriated to pay the interest accrued on said loan on the first day of January next.

And be it further resolved, That when the said loan shall be effected, one half thereof shall be deposited in the state treasury.

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* Private and Temporary.

CHAPTER XXVII.

An Act for the Collection of Moneys due the State, and for other purposes.—*Passed December* 16, 1820.

NOTE.—This and the two following chapters were not in the Manuscript. They are inserted by directions of Mr. Hitchcock.—*Printers.*

Proceedings against holders of public money.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That when any collector of the revenue or other person accountable for public money, shall neglect to pay the same into the treasury, by the time which by law he shall be required to do, it shall be the duty of the comptroller of public accounts, and he is hereby required immediately to institute suit for the recovery of the same, by notifying such delinquent collector or other person, his security or securities, their executors or administrators, that he will by the attorney-general on such a day as shall be named in such notice, before the circuit court of Dallas county, move for judgment against him or them, and his security or securities for the amount due to the State. And service of such notice shall be made on the defendant or defendants, by the sheriff of the county where the defendant or defendants may be found, at least fifteen days previously to the day on which the motion shall be made; and it shall be the duty of the sheriffs of the several counties respectively, on the receipt of every such notice, immediately and without delay to execute the same by serving the defendant or defendants with a copy thereof, and to return the original with an account of his proceedings on the back thereof, to the clerk of the circuit court of Dallas county, on or before the day appointed for such motion to be made; for which service the sheriff shall be entitled to receive the same pay that is allowed for the service of writs, and the notice so served and returned shall be deemed the leading process in the suit.

Comptroller to give notice.

To be served by sheriff.

Special court to be held.

SEC. 2. *And be it further enacted,* That it shall be the duty of the judge of the circuit court for the circuit, embracing the county of Dallas, on the request of the comptroller for that purpose made, to hold a special session of said court at the town of Cahawba, for the purpose aforesaid, and in such case the judge shall issue his warrant under his hand and seal directed to the clerk of said court, who shall thereupon give notice to the attorney-general, and the other officers of the court, and shall issue all necessary process returnable to said special session, which process the sheriffs of the several counties respectively, to whom the same may be directed, shall be bound to execute under the same limitations and restrictions, as in the case of a regular court in course.

Transcript from comptroller's books sufficient evidence.

SEC. 3. *And be it further enacted,* That in every case of delinquency, where suit shall be instituted as aforesaid, a transcript from the books and proceedings of the comptroller authenticated under the seal of his department, shall be admitted as evidence, and the court trying the cause shall be thereupon authorized to grant judgment for the amount due the state, together with fifteen per centum damages, and interest of eight per centum per annum, from the day on which the same became due, and award execution accordingly. And all copies of bonds, contracts, and other papers, relating to or connected with the accounts between this state and any individual, when certified by the comptroller to be true copies of the originals on file, and authenticated under the seal of his department as aforesaid, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in open court: *Provided*, that when suit is brought upon bond or other sealed instrument, and the delinquent shall plead *non est factum*, or upon motion to the court, such plea or motion being verified by the oath of the defendant it shall be lawful for the court to take the same into consideration; and if it shall appear to be necessary for the attainment of justice, to require the production of the original bond, contract, or other paper, specified in such affidavit.

Per cent. damages.

Transcript as authentic as originals.

Proviso.

Judgment to be given at return term.

SEC. 4. *And be it further enacted*, That when suit shall be instituted as aforesaid against any person or persons indebted to this state as aforesaid, it shall be the duty of the court to grant judgment at the return term on motion; unless the defendant shall in open court, the attorney-general being present, make oath or affirmation, that he is equitably entitled to credits which have not been allowed him, specifying each particular credit in the affidavit, and that he cannot then come safely to trial, oath or affirmation to this effect being made, subscribed and filed, if the court be thereupon satisfied, a continuance until the next succeeding term may be granted, but not otherwise: *Provided*, That in all cases where the defendant shall appear and contest the claim of the state, and demand the benefit of a trial by jury, the court shall *instanter* empannel a jury, if at a special session, of bystanders, to try the issue, and give judgment accordingly.

Trial by jury.

The state shall have preference in case of insolvency.

SEC. 5. *And be it further enacted*, That hereafter, in all cases of insolvency, or when any estate in the hands of the executors, administrators, or assignees, shall be insufficient to pay all the debts due from the deceased to the state, the debt or debts due to the state shall be first satisfied; and any executor, administrator, or assignee, or other person, who shall pay any debt due by the person or estate, from whom, or for which, they are acting previous to the debt or debts due to the state from such person or estate, being first duly satisfied and paid, shall become answerable in their own person and estate, for the debt or debts so due to the state, or so much thereof as may remain due and unpaid, and actions or suits at law may be commenced against them for the recovery of said debt or debts, or so much thereof as may remain due and unpaid, in the proper court having cognizance thereof: *Provided*, That if the principal in any bond which shall be hereafter given to this state, shall become insolvent, or if such principal being deceased, his or her estate and effects, which shall come to the hands of his or her executors, administrators, or assignees, shall be insufficient for the payment of his or her debts, and if in either of said cases any surety, on the said bond or bonds, or the executors, administrators, or assignees of such surety, shall pay to the state the money due upon such bond or bonds, such surety, his or her executors, administrators, or assignees, shall have and enjoy the like advantage, priority, or preference, for the recovery and receipt of the said moneys out of the estate of such insolvent or deceased principal, as are reserved and secured to the state, and shall and may bring and maintain a suit or suits upon the said bond or bonds, in law or equity, in his, her, or their own name or names, for the recovery of all moneys paid thereon. And the cases of insolvency mentioned in this section shall be deemed to extend to cases in which a debtor not having sufficient property to pay all his or her debts, shall have made a voluntary assignment thereof, and to cases in which the estate and effects of an absconding, concealed, or absent debtor, shall have been attached by process of law.

Sureties entitled to similar preference.

SEC. 6. *And be it further enacted*, That if any bond, contract, or other paper, relating to, or connected with any account between this state and any individual, has been, or hereafter shall be, lost or mislaid, so that the same cannot be produced in court, it shall be lawful for the court to receive evidence of the fact, and of the contents of such bond, contract, or other paper, and such evidence shall be entitled to the same degree of credit, which would be due to the original papers if produced and authenticated in open court.

Evidence of the contents of a lost bond, sufficient.

SEC. 7. *And be it further enacted*, That nothing in this act shall be construed to repeal, take away, or impair any legal remedy or remedies for the recovery of debts now due or hereafter to be due to this state, in law or equity, from any person or persons whatever, or to defeat any suit or suits now pending in behalf of the state against any person or persons whatever, which remedy or remedies might be used if this act was not in force.

No remedies to be taken away by this act.

SEC. 8. *And be it further enacted*, That where any person or persons shall have any claim against this state, and shall be desirous to institute suit for the recovery thereof, such person or persons may petition the supreme court, setting forth in such petition the nature of such claim, and that he is desirous to have an investigation thereof, and the said person or persons, shall at the same time give notice of such petition to the attorney-general; and it shall be the duty of said supreme court, upon presentation of said petition, to appoint any two of the judges of said court to form a court for the trial of such suit, and shall appoint a time as soon after the adjournment of the supreme court as may be for such trial to be had; and the clerk of the supreme court shall be the clerk of said court for the trial of said suit, and he shall issue all necessary process, which shall

Remedy against the state, how prosecuted.

be served and returned by the proper officer or officers to whom the same may be directed, as in other cases; and it shall be the duty of the sheriff of Dallas county to attend said court, and execute all orders thereof, and of the attorney-general to attend said court in behalf of the state.

Court shall record testimony unless trial by jury.

SEC. 9. *And be it further enacted*, That it shall be the duty of the court to receive and record all testimony applicable to the merits of the case, and to give judgment for or against the state as to justice shall appertain: *Provided*, That if the plaintiff shall demand a trial by jury, the court shall thereupon empannel a jury of bystanders, and it shall be the duty of said jury in all cases to return a special verdict, and in that case, it shall not be the duty of the court to record the testimony; but the judgment of the court shall be rendered upon such verdict.

Plaintiff to pay costs in certain cases.

SEC. 10. *And be it further enacted*, That if the decision of the court shall be for the state, judgment shall be entered against the plaintiff for cost, and execution shall issue against him accordingly. But if judgment shall be rendered against the state, it shall be the duty of the clerk to make out two complete transcripts of the proceedings certified under his hand and seal, one of which he shall deliver to the speaker of the house of representatives, on or before the third day of the next succeeding session of the general assembly, and shall deliver the other to the plaintiff in the suit: *Provided*, That nothing herein contained shall be so construed as to debar any person having a claim against the state, from at any time laying the same before the general assembly.

CHAPTER XXVIII.

An Act supplementary to an Act, entitled "An Act for the Collection of Moneys due the State, and for other purposes."—*Passed December* 3, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the county court of Dallas county be, and the same is hereby vested with the same powers for the collection of debts due this state, that are now vested in the circuit court of Dallas county, and that the proceedings in said court in such cases, shall be the same as are now provided by the act to which this is an amendment.

CHAPTER XXIX.

A Resolution vesting the Governor with the Authority to settle the Accounts between this State and the Mississippi State.—*Passed December* 13, 1819.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That the Governor be, and he is hereby authorized to adjust and settle the accounts existing between this state and the state of Mississippi, in such manner, and on such principles, as in his judgment may be conformable to the intent and meaning of the ninth section of the act of congress, establishing a separate territorial government for the eastern part of the Mississippi Territory.

TOWNS.—1805.

CHAPTER I.

An Act to establish a Town in Washington County, by the name of Wakefield. *Passed February* 1, 1805.

Whereas Richard Brashears has laid out a town on the lands of said Brashears, whereon the court-house now stands, in said county, and it being necessary that the same shall be established and regulated by law: **Preamble.**

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That said town shall be known and distinguished by the name of "Wakefield," and is hereby established agreeably to the present plan, a copy of which said proprietor is hereby required to file in the clerk's office of the county of Washington within six months after the passing of this act. **Town of Wakefield established.**

SEC. 2. *And be it further enacted,* That John Armstrong, George Brewer, jun. James Denby, sen. Edmund Craighton, and Thomas Bassett, be, and they are hereby appointed commissioners for the regulating of said town of Wakefield, vested with full power and authority for that purpose. **Trustees.**

CHAPTER II.

An Act authorizing the laying out a Town in Washington County.—*Passed January* 8, 1807.

Whereas sundry inhabitants of the county of Washington, near Fort St. Stephens, by their petition have set forth to the legislature, that it would be expedient and of great utility to themselves, and the inhabitants in general, to have a town laid out on the lands of Edwin Lewis, on the Tombeckbee river, near Fort St. Stephens:

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That John Baker, James Morgan, and John F. M'Grew, be appointed commissioners, and they are hereby authorized to lay out a town (the streets of which shall not be less than one hundred feet wide) on the lands of the said Edwin Lewis, near Fort St. Stephens, reserving for the use of this territory, agreeably to the intention of the said Edwin Lewis, so much land in the said town, so to be laid out, for public purposes, as the aforesaid commissioners may think necessary, subject to the future disposal of the legislature of the Mississippi territory.

SEC. 2. *And be it further enacted,* That the said commissioners are hereby authorized and directed to receive of the said Edwin Lewis, a good and sufficient title to such reserved land, in behalf of the territory, and it shall further be the duty of the said commissioners, to deliver a plan of the said town by them so to be laid out, together with the title to such reserved land by them to be taken as aforesaid, to the clerk of the county court of said county, within one month after laying out the same, whose duty it shall be to record the said plan and title in his office.

Sec. 3. *And be it further enacted*, That the act, entitled "An Act to authorize the laying out a Town in Washington County, by the name of Maconsbay," passed the eleventh day of November, 1803, be, and the same is hereby repealed.

CHAPTER III.

An Act to establish a Town on the lands of Josias Bulloek, by the name of Rodney.—*Passed March* 25, 1811.

Establishing the town of Rodney.

Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, That Josias Bullock is hereby authorized to lay off a town on his land, near St. Stephens, which town, when laid off, and a plan of the same recorded in the clerk's office of the county court of Washington county, shall be known and called by the name of Rodney.

CHAPTER IV.

An Act to change the name of the County Town of Madison County, from Twickenham to Huntsville.—*Passed November* 25, 1811.

Huntsville.

Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened, That from and after the passage of this act, the county town of Madison county (now called Twickenham) shall be called and known by the name of Huntsville.*

CHAPTER V.

An Act to Incorporate the Town of Huntsville, Madison County.—*Passed December* 9, 1811.

Incorporation of Huntsville.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the town of Huntsville, in Madison county, shall be, and the same is hereby incorporated, and all free white male inhabitants of said town, above the age of twenty-one years, are hereby authorized to vote for five persons as trustees of said corporation, who are authorized and empowered to superintend the police of said town, by passing such by-laws, not contrary to the laws of the United States, or of this territory, as they may think proper for the well government of said town, and for the suppression and removal of nuisances, laying off and repairing the streets.

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*Provisions for the first establishment of this town will be found under title 14, "Court-Houses," chapter 1.

SEC. 2. *And be it further enacted*, That the said trustees, or a majority of them, are hereby authorized to assess such taxes on all property lying within the boundaries of said town, as they may think proper, for all the purposes of a proper police, said assessment of taxes not to exceed two hundred dollars. Trustees to assess taxes.

SEC. 3. *And be it further enacted*, That there shall be a constable appointed within the limits of said town, whose duty it shall be, to collect the taxes mentioned in the preceding section, and to whom the taxes aforesaid shall be given in upon oath, and the said constable shall receive on such taxes, when collected, five per centum for collecting and paying over the aforesaid taxes to such trustees as may be appointed by the board to receive the same. Constable to collect town taxes.

SEC. 4. *And be it further enacted*, That the election for trustees shall be held at the court-house, on the first Monday in February annually, under the superintendence of the sheriff and any justice of the peace, which election shall commence at the hour of ten o'clock in the morning, and close at two o'clock in the evening. Election for trustees.

CHAPTER VI.

An Act to extend the Corporate Limits of Huntsville—*Passed November* 16, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That the lots on the north side of the town of Huntsville, and adjoining the same, at present owned by Elisha B. Clarke, Alexander A. Campbell, William W. Harris, George W. Harris, Francis Newman, Fleming Ward, Daniel Murphy, Nicholas Stieffield, William Clarke, Andrew Cross, William Steelman, and Thornton H. Cook, be and the same are hereby annexed to, and made a part of the said town of Huntsville, and the said several lots, and the future occupants of them, shall be hereafter subject to all the by-laws and regulations, and entitled to the same rights and privileges in all respects which are common to other persons residing within the present corporate limits. Owners' names of lots annexed. Occupants, how subject.

SEC. 2. *And be it further enacted*, That the provisions of this act shall in no respects be extended to, or affect the property or other rights of any individual not herein mentioned. To affect no other rights.

CHAPTER VII.

An Act to establish a Town in Baldwin County, by the name of Dumfries. *Passed December* 13, 1811.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That there shall be established a town, to be called and known by the name of Dumfries, on the lands of Joseph Dumfries.

Pulaskie Kennedy, and it shall be the duty of the proprietor to have recorded in the clerk's office of the county of Baldwin a plan of said town, within six months after the passage of this act.

SEC. 2. *And be it further enacted*, That the said proprietor may appoint a trustee or trustees, to sell or lease, or otherwise dispose of the les in said town, and due conveyances to make for the same.

CHAPTER VIII.

An Act to establish and Incorporate the town of St. Stephens.—*Passed December* 18, 1811.

St. Stephens. SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the place situated on the west side of the Tombeckbee river, in the county of Washington, known by the name of St. Stephens, is hereby declared to be a town, under the name of St. Stephens as aforesaid, and it shall be the duty of the owner or owners thereof, to deposite in the clerk's office of the county court of the county aforesaid, within six months after the passage of this act, a plat of said town.

Incorporated. SEC. 2. *And be it further enacted*, That the town of St. Stephens be, and the same is hereby incorporated; and the citizens of said town are hereby authorized on the first Monday in March, annually, at the court-house of Washington county, to vote for five persons, inhabitants of said town, as trustees, which said election shall be superintended by some justice or justices of the peace, and shall commence at ten o'clock in the forenoon, and close at three o'clock in the afternoon of the same day.

Trustees. SEC. 3. *And be it further enacted*, That a majority of said trustees shall constitute a board to do business, and shall have power and authority to pass such laws and regulations for the government and internal police of said town, as they may think proper, not contrary to the laws of this territory, and the said trustees shall be a body corporate, by the name and style of the trustees of the town of St. Stephens, and as such shall have all the powers incident to bodies corporate.

Vacancies, How supplied. SEC. 4. *And be it further enacted*, That if any vacancy should happen from death, resignation, or removal from said town, of any of the said trustees, that then the citizens shall have authority to elect such person as they may think proper, to fill the vacancy, at such time and place as the balance of said trustees may appoint, by advertisement at the court-house, and such other public place within said town as they may think proper.

Town tax. SEC. 5. *And be it further enacted*, That the said board of trustees may, at their first or any subsequent meeting, levy and direct to be collected, a town tax, not exceeding one half of the amount directed by law to be collected as a territorial tax, on persons and property within said town.

CHAPTER IX.

An Act to amend an Act, entitled An Act to establish and incorporate the Town of St. Stephens, and an Act to incorporate the town of Huntsville, in Madison County.—*Passed November* 29, 1815.

St. Stephens.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That the tract of country included within the tract of land, called and known as the St. Stephens Tract, shall hereafter be designated and known by the name of the town of "St. Stephens."

Meeting of the landholders, freeholders, &c. required annually.

SEC. 2. *And be it further enacted,* That the landholders, freeholders, and householders within the said town of St. Stephens, shall, on the first Monday in March annually, at or near the market-house in said town, hold a meeting, to commence at the hour of ten o'clock in the forenoon, and close at the hour of five o'clock in the afternoon, and shall then and there elect by ballot five persons, inhabitants of said town, trustees of said town, a majority of whom shall at all times constitute a quorum to do business; also a town treasurer, assessor, collector, and constable, to serve for one year, and the said trustees shall on the day next succeeding such election in each year, meet and choose by ballot from among their own numbers, a president, who shall in each and every year, be commissioned by the governor as a justice of the peace for the town of St. Stephens, to continue in office until the time appointed by law for holding the next annual election, whose duty it shall be to preside and keep order at the meetings of said trustees; and in case of the absence of the president, any other of the trustees may be appointed pro tempore, and the said trustees are hereby constituted a body politic and corporate, and shall bear the name of "The President and Trustees of the town of St. Stephens," and by that name they and their successors shall have perpetual succession, may have a common seal, with liberty to alter it at pleasure, and all other powers incident to bodies corporate.

Trustees.

Incorporated.

Trustees, how elected.

SEC. 3. *And be it further enacted,* That the trustees of the said town in office at the time of holding the annual election in each and every year, shall remain and continue in office until successors be duly elected, and it shall be the duty of said trustees in office, or any two of them, to preside at the elections, and declare the person or persons duly elected, and when, on counting the ballots there shall appear to be an equal number of votes for two or more candidates, then the president shall vote, and in no other case, and in case the whole number of trustees authorized by law at any election, should not be then elected, or if no election shall be had on that day, or in case of a vacancy occurring from death, resignation, or removal from the town, the trustees then remaining in office, shall appoint another day, by public notice given by advertisement in said town, at least five days previous thereto, for holding an election for trustees, or any number thereof required.

Trustees to have power to levy a certain sum of money annually.

SEC. 4. *And be it further enacted,* That the said trustees shall have power annually to cause to be levied, assessed, and collected, such sums of money as they may think necessary for the supply of said town; which sum or sums shall be assessed upon the landholders, freeholders, and householders within said town, by the town assessor, according to the regulations to be established by the said trustees, and collected and paid by the town collector under the directions of the said trustees: *Provided,* That the sum assessed and collected annually, shall not exceed the sum of twelve and a half cents on every hundred dollars worth of property within said town, unless agreed to by a majority of the landholders, freeholders, and householders residing within said town: and the president and trustees are hereby authorized to lay a tax on carts, drays, wagons, or other vehicles of transportation, and only such as are employed in transporting for pay or compensation any article whatsoever from one place to another, within the limits of the town aforesaid: also, on all retailers of spirituous liquors, a sum not exceeding ten dollars per annum.

Tax on carts, drays, wagons, &c.

SEC. 5. *And be it further enacted,* That the said trustees shall meet on their own adjournments, and shall have power, from time to time, and at all times hereafter, to make such by-laws and regulations in writing, not inconsistent with the laws of the United States, or of this territory, as to them shall appear necessary for the good government of the said town, and the same to put in execution, revoke, and alter, as to them shall seem expedient. They shall also appoint their own clerk, a clerk of the market, and such other subordinate officers as they may think necessary, for the good government of the said town, and by ordinance to require such security from the several officers, and to annex such fees to the several offices of the corporation, and to impose such fines for the neglect of duty in office or misconduct in the same, as to them shall appear necessary; and to make, limit, and impose, and tax reasonable fines and amercements, in any one case not exceeding twenty dollars, against all, and upon all persons who shall offend against the laws, ordinances, and regulations of the corporation, made as aforesaid: and all such fines and amercements to take, demand, require, and levy, of the goods and chattels of such offender, by warrant issued under the hand and seal of the president, directed to the town constable; who is hereby required and authorized to execute the same: which fines shall be paid to the town treasurer, to be appropriated to the use and benefit of the inhabitants of the town.

Fines against offenders.

Roads and highways to be kept in repair, and in what manner.

SEC. 6. *And be it further enacted,* That the said president and trustees shall have power to lay out and establish, or to alter all needful roads and highways, leading out of said town, as far as the limits of the jurisdiction thereof, and to keep the same in repair with the hands belonging to said town, to the exclusion of the jurisdiction of the county court of the county.

Huntsville incorporated.

SEC. 7. *And be it further enacted,* That the provisions of this act shall, in all its parts, extend to the trustees of the town of

Huntsville, in Madison county, except as to the time of holding the annual elections for trustees.

Publications of by-laws and ordinances.

SEC. 8. *And be it further enacted*, That it shall be the duty of the trustees of said town, to publish all the by-laws and ordinances made and established by them, either by inserting them in some newspaper, published in the town where the same are made, or by posting them up at the market-house thereof; and no by-laws or ordinances shall be considered in force, until the same is published as aforesaid.

Repealing clause.

SEC. 9. *And be it further enacted*, That all acts, and parts of acts, coming within the purview and meaning of this act, be, and the same hereby are repealed.

CHAPTER X.

An Act to incorporate the Town of Rodney, and for other purposes.—*Passed February* 13, 1818.

Established by the name of Rodney.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That the town of Rodney, laid out on the land of Josias Bullock, near St. Stephens, in the county of Washington, pursuant to an act of the general assembly of the Mississippi territory, passed on the twenty-fifth day of November, eighteen hundred and eleven, be, and the same is hereby established by that name and style.

To elect each year five trustees.

SEC. 2. *And be it further enacted*, That hereafter, the landholders, freeholders, and householders within the said town of Rodney, shall, on the first Monday in March next, and on that day in each year, at the Eagle Tavern, hold an election, to commence at ten o'clock in the morning, and close at five o'clock in the evening, for the purpose of electing, by ballot, five persons, inhabitants of said town, trustees thereof, a majority of whom shall constitute a quorum to do business; and also a town treasurer, assessor, and collector, and constable, to serve for one year.

Subject to the same regulations as the town of St. Stephens.

SEC. 3. *And be it further enacted*, That the said trustees and other officers to be so elected, shall proceed in the same manner, possess the same powers, and be subject to the same restrictions as are prescribed by law for the government of the trustees and other officers of the town of St. Stephens.

Six months residence entitles a person to vote.

SEC. 4. *And be it further enacted*, That every free white male, of full age, who has resided in the town of St. Stephens six months previously to the election of the trustees for the said town of St. Stephens, shall be entitled to vote for the said trustees.

CHAPTER XI.

An Act establishing Towns in the Counties of Wayne, Jackson, Marion, and Baldwin.—*Passed December* 18, 1812.

Plan to be recorded.

SEC. 4. *And be it further enacted*, That Wilson Carmon be, and he is hereby authorized, to lay off a town on his land in

Baldwin county, near Fort Stoddert, which town shall be called and known by the name of Belville.

SEC. 5. *And be it further enacted*, That the proprietors of the aforesaid town shall be bound to record a plan of their respective towns, in the clerk's office of the county court of their respective counties, within six months after the passage of this act.

NOTE.—The other sections of this act relate to towns in the state of Mississippi.

CHAPTER XII.

An Act to provide for the Government of the Town of Mobile.—*Passed January* 20, 1814.

President and commissioners of the town of Mobile, how elected.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the landholders, freeholders, and householders, within the town of Mobile, shall, on the first Monday in March, or as soon thereafter as may be convenient, in each and every year, in said town, hold an election, to commence at ten o'clock in the morning, and close at four o'clock in the afternoon; and then and there elect by ballot seven commissioners, a majority of whom shall constitute a quorum to do business; also a town treasurer, assessor, and collector, to serve for the term of one year; and the said commissioners so elected shall, on the next day after such election in every year, meet and choose by ballot, from their own body, a president, whose duty it shall be to preside and keep order at the meeting of said commissioners, and in his absence or incapacity, any other member may be called to the chair, and the said commissioners shall be, and they are hereby constituted a body corporate, by the name and style of "President and Commissioners of the Town of Mobile;" and by that name, they and their successors shall be liable in law, of suing and of being sued, of pleading and of being impleaded, in all manner of suits and actions, in either law or equity; and also to do all other acts which are incident to bodies corporate.

Treasurer, assessor, and collector.

Duty of president.

Style of corporation.

Powers of commissioners to raise money.

SEC. 2. *And be it further enacted*, That the commissioners, at their first meeting in each and every year, have power and authority to raise such sum or sums of money, as they shall think necessary, for the well regulation of said town, which sum or sums shall be assessed upon the landholders, freeholders, and householders, within the said town, by the assessor, according to regulations to be established by the commissioners, and collected by the collector, in such a time, and be paid and disposed of in such a manner as the said commissioners shall provide: *Provided*, such sum shall not in any one year exceed twelve and one half cents for every hundred dollars worth of property liable to taxation; but if that sum be insufficient to answer the purpose of well-regulating the said town, it shall be lawful for the president, by the advice of a majority of the commissioners, to call a meeting of the landholders, freehold-

Proviso.

May make a second assessment.

ers, and householders of said town, by giving five days previous notice of such meeting; and the said landholders, freeholders, and householders, by a majority of votes, may order and direct that a further sum be raised, as to them may appear expedient, which further sum or sums shall be assessed, collected, and paid as shall be directed by the commissioners.

Qualification of electors.

SEC. 3. *And be it further enacted*, That all free male white persons, subject to taxation, who shall be in the occupancy of a room separate and apart to himself, shall be deemed a householder, within the meaning of this act, and shall be entitled to vote at the town elections.

Commissioners, when to meet—their power to make by-laws,

and impose fines—how to be collected.

SEC. 4. *And be it further enacted*, That the said commisioners shall meet on their own adjournments, and have power from time to time, to make such laws and regulations in writing as to them may appear expedient for the well regulation and good government of said town: *Provided*, such laws and regulations be not inconsistent with the laws or constitution of the United States, or of this territory. They shall also have power, and they are hereby authorized to impose reasonable fines against all, and upon all persons who shall offend against the laws and regulations made by the commissioners; and all such fines to demand and recover before any justice of the peace, or court of record having jurisdiction of such sums.

In case of death, &c. vacancies, how supplied.

SEC. 5. *And be it further enacted*, That in case of death, resignation, or removal from town, of any of the commissioners, the president for the time being shall call a meeting of the landholders, freeholders, and householders, by advertising the same at the place of meeting in said town, five days previous thereto, who shall by ballot proceed to supply such vacancy.

CHAPTER XIII.

An Act to fix the Limits of the Town of Mobile, and for other purposes.—*Passed December 1, 1814.*

Boundary line.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the town of Mobile be bounded by a line commencing at Choctaw Point, and running in a straight direction to the western bank of the Bayou Chotage, at a point lying two hundred yards above the place on said Bayou Chotage, called the Portage; thence down the western bank of said Bayou to its mouth; thence down the river and bay of Mobile to the place of beginning: *Provided*, the president and commissioners of said town shall not have power to injure, or in any manner use private property, without the consent of the owner or owners, nor to remove as a nuisance any mill-dam, erected, or that may be erected across the said Bayou Chotage.

Proviso.

President and commissioners authorized to lay a tax.

SEC. 2. *And be it further enacted*, That the president and commissioners of the said town of Mobile be, and they are hereby authorized to lay a tax on stores, retailers of spirituous liquors, wheel-carriages, and billiard-tables; but the tax hereby authorized to be laid upon retailers of spirituous liquors, shall not exceed one half of the territorial tax; and the tax authorized to be laid upon billiard tables, shall not exceed one tenth of the territorial tax.

Authorized to lay a town tax.

SEC. 3. *And be it further enacted*, That the president and commissioners of said town be, and hereby are authorized to levy the town tax authorized by the second section of the act, entitled "An Act to provide for the Government of the Town of Mobile," at such time in each year as to them may seem most expedient; any thing in the act aforesaid notwithstanding.

President and commissioners to preside at the annual election, &c.

SEC. 4. *And be it further enacted*, That the president and commissioners in office, on the first Monday in March in each and every year, shall remain and continue in office, until successors be duly elected; and it shall be the duty of the president and commissioners, or any three of them remaining in office, to preside at the annual election appointed to be held on the first Monday in March, or as soon thereafter as convenient, and to declare the persons duly elected at any such election; and when on counting the ballots, there shall appear to be an equal number for two or more persons, it shall be the duty of the judges presiding at such election to declare which of the said persons are elected, and in case the whole number of commissioners authorized by law to be elected on the first Monday in March in each and every year, shall not be then elected, or if no election shall be had on that day, the said commissioners so remaining in office, shall appoint another day by public notice, given in said town, at least eight days previous thereto, for holding an election for commissioners, or any number thereof, who may not have been duly elected on the first Monday in March: *Provided*, that if no election, or an incomplete election be had on the first Monday in March in any year, the time to be appointed by the president and commissioners for an election, shall be within one month thereafter.

President and commissioners authorized to lay out and establish roads, &c.

SEC. 5. *And be it further enacted*, That the president and commissioners of the said town of Mobile, shall be, and hereby are authorized to lay out, alter, and establish all needful roads and highways leading out of said town, as far as the limits of the jurisdiction thereof; and they are hereby authorized to lay out and extend the streets of said town, from time to time in such manner as to them shall seem expedient, but they shall have no power to alter the boundaries of the lots contained in the plan of said town.

CHAPTER XIV.

An Act concerning the Town of Mobile.—*Passed December 24, 1814.*

Powers of the president of Mobile.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the president of the town of Mobile, shall have and exercise the same power and authority in judging of and executing the by-laws enacted by the president and commissioners, and the statutes relating to said town as is now possessed by law by the city magistrate of the city of Natchez, in relation to the said city of Natchez.

SEC. 2. *And be it further enacted*, That the county court for the county of Mobile be, and they are hereby authorized, to purchase, or receive as a donation, a lot in the town of Mobile, and to contract for the erection of the public buildings upon said lot.

Purchase of lot and erection of public buildings.

NOTE.—An Act for the government of the port and harbour of Mobile will be found under title 63, "Trade and Commerce."

CHAPTER XV.

An Act concerning the Town of Mobile and Huntsville.—*Passed December* 12, 1816.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the president and commissioners of the town of Mobile be, and they are hereby authorized and empowered to appoint port wardens for the said town, and pilots for the channels and passes leading from the sea to the said town, surveyors of lumber, and inspectors of flour and salted provisions, imported or exported, and to determine their fees or commissions, which said fees shall be reasonable, and such as are usually allowed in other southern ports of the United States, for similar services, and to make such rules and regulations respecting them as may not be contrary to the constitution or laws of the United States, or the ordinance or the laws of this territory; and relating to the establishment of a board of health, as may by them be deemed expedient, under the restrictions above mentioned. It shall be the duty of the said president and commissioners to take bond and security in such an amount as shall by them be thought fit, from all the persons who may be appointed as aforesaid, conditioned for the faithful performance of their duties; and the said bond may be put in suit at the instance of any one aggrieved by the acts or neglect of the person or persons so appointed, and such damages be recovered as may be assessed by a jury as often as necessity may require, until the whole penalty be exhausted: *Provided*, that the said president and commissioners shall not by any regulations made by them, require any coasting vessel navigating any of the channels or passes leading from the sea to said town of Mobile, to take a pilot on board.

Port wardens for the town of Mobile.

Pilots, surveyors, and inspectors' fee and commission.

Rules and regulations.

Board of health.

Bond to be taken.

Proviso.

SEC. 2. *And be it further enacted*, That no person shall vote at any election for president and commissioners, assessor and collector for the said town, unless he be twenty-one years of age, and shall have been a freeholder in said town, or the tenant of a house or separate room at least six months previous to any election, and shall have paid a county, territorial, or corporation tax, nor unless he be a citizen of the United States, or shall have resided within that part of West Florida, now in the possession of the United States, at the time of the change of government in that province. And the said presi-

Qualification of voters of Mobile.

Powers of president as a justice.

dent shall, when commissioned by the governor, have power to decide finally upon all cases arising under the by-laws made for the said town.

Persons liable to work on roads at Mobile.

SEC. 3. *And be it further enacted*, That all persons residing, or who may hereafter reside in the said town of Mobile, and who would be liable to work upon the roads in the county of Mobile, if the said town had not been incorporated, shall be compelled to perform all the duties imposed by the laws of the territory relating to roads, under the penalties therein specified, in the same manner as if the said town had not been incorporated.

NOTE.—The part of this act relating to Huntsville will be found under Title 63, "Trade and Commerce."

CHAPTER XVI.

An Act to Incorporate the City of Mobile.—*Passed December* 17, 1819.

Style, privileges, &c. of corporation.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the inhabitants of the town of Mobile be constituted a body politic and corporate, by the name of the Mayor and Aldermen of the city of Mobile, and by their corporate name may sue and be sued, implead and be impleaded, grant, receive, and do all other acts as natural persons, and may purchase and hold real, personal, and mixed property, not exceeding at any one time fifty thousand dollars, or dispose of the same for the benefit of the said city, and may have and use a city seal, which may be broken or altered at pleasure.

Corporation limits.

SEC. 2. *And be it further enacted*, That the limits or boundaries of the city of Mobile shall be as follows: Commencing at Choctaw Point, and running in a straight direction to the western banks of the Bayou Chotage, at a point lying two hundred yards above the place on said Bayou Chotage called the Portage; thence down the western bank of said Bayou to its mouth, thence in a straight line to the west bank of the island in front of Mobile; thence along the margin of said island to the south point of said island, and thence in a straight line to the place of beginning.

Mayor and aldermen may appoint city officers.

SEC. 3. *And be it further enacted*, That the said mayor and aldermen shall have full power to appoint a clerk to the corporation, a treasurer, an inspector or inspectors of streets, lanes, and alleys, fences, yards, and all out-houses, three police constables, an assessor, a collector of taxes, an attorney to the corporation, and all other officers necessary to carry into effect this incorporation.

Their number and qualifications.

SEC. 4. *And be it further enacted*, That the said corporation of the city of Mobile, consisting of mayor and aldermen, shall be constituted of seven members, residents of the city, and over the age of twenty-one years, and each of whom shall be possessed of a freehold estate within the limits of said city;

How and by whom elected.

the said aldermen to be elected annually, by ballot in a general ticket, by the free white male inhabitants of the age of twenty-one, being freeholders within the city, or who have resided in the city twelve months, and paid taxes therein the year preceding that in which the election shall be held, and have rented a tenement or separate room, six months immediately preceding the said election. The commissioners of the town of Mobile, in office when this act shall go into operation, shall appoint three inspectors or judges, to preside at the first election of aldermen, whose certificate, stating the number of votes taken, and who are the seven highest on the list, (and said certificate being filed in the clerk's office of the commissioners of the town of Mobile,) shall be conclusive, as to who are elected aldermen for said city; and at all elections subsequent to the first, the mayor and aldermen for the time being, shall appoint the said three inspectors or judges, to preside at the elections, whose certificate, as aforesaid, shall be conclusive, being filed with the clerk of the mayor and aldermen of the city of Mobile: and the said inspectors or judges shall have power and authority to keep order at the place of holding the said elections; and to commit to the jail of the county, for the space of forty-eight hours, any person who shall attempt to make, or make any disturbance at the place of holding the said elections, so as to interfere with the peaceable and orderly conducting of said elections; and the sheriff of the county of Mobile, and the police constables, appointed by the mayor and aldermen of the city of Mobile, are hereby commanded to obey and carry into execution, all process issued by the said judges, or inspectors as aforesaid, in pursuance of this act; and the said inspectors or judges shall give ten days public notice, by advertising in some public newspaper, printed within the said city of Mobile, or by posting up such notice in two of the most public places within said city, of the time and place of holding the said elections, which said place must be within the incorporated limits of the city of Mobile: and if there should be an equal number of votes between any two persons or more, who shall be voted for at the regular elections for aldermen, so as to prevent the election of the whole number designated by this act, the said judges and inspectors shall declare the fact, and issue notices for a new election, in the same mode as for the regular elections, to supply the places of those who may have an equal number of votes. And in case of the death, continued absence for four months, resignation, or removal, of any one who shall be elected alderman, an election, in the mode prescribed by this act, shall take place, to supply the vacancy. That the first election shall take place on the second Monday of February, in the year eighteen hundred and twenty, and that the regular subsequent elections shall be on the first Monday of December, in each year, and that in three days subsequent to each election, each person who shall be elected, shall take the following oath, before any justice of the peace, or judge of any court within the county of Mobile: "I, —— ——, do solemnly swear, that I will truly execute the duties of alderman, as prescribed by the

Commissioners to appoint judges of first election, &c.

To keep order thereat.

Election in case of death.

Election of aldermen.

Their oath.

act incorporating the city of Mobile." And that immediately after the said oath shall be taken, the said aldermen shall meet at some convenient place, within the incorporated limits of the said city of Mobile, and there organize, and, by vote *viva voce*, shall proceed to elect a mayor from their number, and he who shall have the highest number of votes, shall be declared mayor for the succeeding year, and that four members present shall constitute a quorum to do business.

Aldermen to elect a mayor.

[SEC. 5. Repealed December 5, 1822.]

Manner of adjournment and procedure.

SEC. 6. *And be it further enacted*, That the said mayor and aldermen, or a majority of them, shall have power to adjourn their meetings from time to time, unless sooner called together, by a written notice from the mayor, designating the time and place of holding such meeting; they shall keep a journal of their proceedings, and enter the yeas and nays on any question, resolve, or ordinance, at the request of any member; and their deliberations shall be public.

Pass by-laws, &c.

SEC. 7. *And be it further enacted*, That the mayor and aldermen aforesaid, or a majority of those present, shall have full power and authority to pass all by-laws and ordinances, to regulate the stationing, anchorage, and mooring of vessels within their jurisdiction; to prevent and remove nuisances; to prevent the introduction of contagious or infectious diseases within the said city, by regulating the approach of vessels having sick on board, and the landing the sick, or of articles calculated to produce disease, and by providing one or more places for the reception of the sick, or by any other lawful means whatsoever; to establish night-watches or patrols, and erect lamps, to provide for licensing and regulating retailers of liquors within the limits of the said corporation, and the annulling the same on good and sufficient complaint being made against any person holding such license; for the regulating of hackney carriages, wagons, carts, and drays, and for licensing the same; and for the regulating of pawn-brokers within the city; to restrain or prohibit gambling; and to provide for licensing and regulating theatrical and other public amusements within the city; to regulate and establish markets, and to rent out the stalls in the same, and to prohibit the selling of meats, poultry, fish, or game, except at the public market or markets; to erect and repair bridges; to keep in repair all necessary streets, avenues, drains, and sewers, and to pass regulations necessary for the preservation of the same; to provide for the licensing and regulating the sweeping of chimneys, and fixing the rates thereof; to establish and regulate fire wards and fire companies; to sink wells and erect and repair pumps in the streets; to impose and appropriate fines, penalties, and forfeitures for breach of their ordinances or by-laws; to enact by-laws for the prevention and extinguishment of fires, and if necessary, to remove or pull down buildings or fences for the prevention of the spreading of the same; to erect and establish hospitals or pest houses, work-houses, houses of correction, penitentiary, and other buildings, for the use of the city, or to join with the county of Mobile in the erection of the same, and to have a joint control over the same with the public authorities of the county, and to lay and collect taxes as prescribed by this act, for defraying the expenses thereof, and for all other necessary purposes; to regulate party and other fences, and determine by whom the same shall be made and kept in repair; to restrain and prohibit the nightly and other meetings, or disorderly assemblies of slaves, free negroes, and mulattoes, and to punish such slaves by whipping, not exceeding twenty stripes, and to punish such free negroes and mulattoes, and other persons for such offences, by fixed penalties, not exceeding fifty dollars for any one offence, and in case of the inability of such free negro or mulatto, or other person, to pay and satisfy any such penalty and costs thereon, to cause such free negro or mulatto, or other person, to be confined to labour for such reasonable time, not exceeding three calendar months for any one offence, as may be deemed equivalent to such penalty and costs, which said labour shall be such as shall be designated by the said mayor and aldermen, for the general benefit of the said city: to cause all vagrants, idle or disorderly persons, all persons of evil life or ill fame, and all such as have no visible means of support, or are likely to become chargeable to the city as paupers, or are found begging or drunk in and about the streets, or loitering in or about tippling houses, or who can show no reasonable course of business or employment in the city; all who have no fixed place of residence, or cannot give a good account of themselves, all who are grossly indecent, in language or behaviour, publicly in the street, and all public prostitutes, or such as lead a notoriously lewd, or lascivious course of life, to give security for their good behaviour, for a reasonable time, and to indemnify the city against any charge for their support; and in case of their refusal or inability to give such security, to cause them to be confined to labour, for a limited time, not exceeding four calendar months, unless such security shall sooner be given, which said labour shall be such as shall be designated by the mayor and aldermen, for the general benefit of the said city; and that the labour so designated by the mayor and aldermen may be carried into effect, they shall have power to appoint a person or persons to take those so confined and sentenced to labour, from their place of confinement, to the place appointed for their working, and watch them while at labour, and return them before sun-down, to the place of confinement, and if they should be found afterward offending, such security may again be required, and for want thereof, the like proceedings may be again had from time to time, as often as may be necessary; to take care of, preserve, remove, designate, and regulate all burying grounds within the city; to license bakers, and regulate the weight and price of bread, and prohibit the baking for sale except by those licensed.

Mayor to take an oath.

SEC. 8. *And be it further enacted*, That the said mayor, before he enters on the duties of his office, shall take an oath or affirmation, in the presence of the board of aldermen, "lawfully to execute the duties of his office, to the best of his skill and judgment, without favour or partiality," and the said mayor, and each of the said aldermen, shall, *ex officio*, have and exercise the powers of a justice of the peace within the city of Mobile, so far only as it relates to carrying into effect all the ordinances, by-laws, and regulations of the corporation. The mayor shall nominate, and with the consent of a majority of the aldermen, appoint to all offices under the corporation, except otherwise provided for; and any such officer shall be removed from office, on the concurrent remonstrance of two-thirds of the aldermen. He shall see that the laws of the corporation be duly executed, and shall report the negligence or misconduct of any officer to the board of aldermen. He shall lay before the board of aldermen, from time to time, in writing, such alterations in the laws of the corporation as he shall deem necessary or proper, and shall receive for his services annually, a just and reasonable compensation, to be allowed and fixed by the board of aldermen, which shall neither be increased nor diminished, during the period for which he shall have been elected. In case of the refusal of any alderman to accept the office of mayor, upon his election thereto, or of his death, resignation, inability, or removal from the city, the said board of aldermen shall elect another in his place, to serve the remainder of the year.

Mayor and aldermen to be *ex officio* justices.

Mayor to appoint subordinate officers.

To enforce by-laws, &c.

To state necessary alterations to the board.

His compensation.

His office, how filled in case of death.

Sec. 9. *And be it further enacted*, That the said mayor and aldermen shall have power to lay taxes on both the personal and real estate within the city, as well as a poll-tax upon all the inhabitants: *Provided*, That the said tax upon the personal and real estate be laid in pursuance of an assessment and valuation of the said personal and real estate, to be made by some discreet person thereto appointed as assessor by the said corporation, and which said tax shall be laid in the manner following: The said assessment, or valuation, when completed, containing all the property, as well as the names of the owners thereof, shall be lodged with the clerk of the corporation; and the mayor and aldermen shall assess so many cents on the dollar, making no distinction as to any person, and which said assessment or valuation (together with the names of the persons liable to taxation,) with the tax laid thereon, shall be open for inspection, to all and every person interested therein. And the mayor and aldermen shall give ten days public notice, in some public newspaper printed within the limits of the city of Mobile, that the said assessment, or valuation, together with the tax laid thereon, is ready for inspection; and if any person shall be dissatisfied with the said assessment or valuation, or tax laid thereon, he, she, or they shall give notice to the mayor, and the said mayor shall convene the board of aldermen, and notice the dissatisfied person or persons of the meeting, who shall have liberty to appear and be heard before the said meeting, touching his objections; and the said mayor and aldermen shall take into consideration the objections so to be made, and shall have power to alter the assessment or valuation, together

Mayor and aldermen may levy tax, &c.

Proviso.

with the tax assessed thereon, as to them shall seem meet; but their decision shall be final, as to all questions or objections that may be brought before them, in reference to the said assessment or valuation, and the tax assessed thereon as aforesaid; and after twenty days have elapsed, from giving the notice that the said valuation or assessment, together with the tax assessed thereon as aforesaid, are ready for public inspection, the said mayor shall proceed to make out a tax list, annexed to which shall be a warrant, directed to the collector of the corporation, containing the description of the real estate taxed, together with its valuation, and the tax assessed thereon, and also the amount of the personal property valued or assessed to each person, together with the tax assessed thereon, and the name of each person liable to a poll-tax, with the amount of such poll-tax laid; and it shall be the duty of the said collector to call on each person so taxed, if they can be found within the city, and leave a written notice of the amount of taxes due by such respective individual; and if, within six days after the said notice shall have been left with the said individual as aforesaid, the said tax shall not be paid to the said collector, the said collector shall proceed to distrain the personal property of such individual, by virtue of said warrant, and to advertise the same for sale, (by giving six days public notice in some public newspaper printed within the city,) to the highest bidder, at public auction; and if there be any overplus money, after paying the tax, and costs of seizure and sale, the said overplus shall be returned to the said person whose personal property was seized and sold; and if the taxes on any real estate shall remain unpaid for the space of ten days after the delivery of the tax-list to the said collector, the said collector shall proceed to publish a descriptive list of the said real estate, together with the names of the owners, if known, as well as the valuation of the said real estate, together with the tax assessed thereon, for the space of two months, in some public newspaper printed within the limits of the said city; and if at the expiration of the said two months, the tax shall remain unpaid, the collector shall return the same to the clerk of the corporation: and the mayor of the said corporation shall give one month public notice, by publishing in some public newspaper, printed within the limits of the said city of Mobile, that the said real estate, or so much thereof as may be necessary to satisfy the tax or taxes, so remaining unpaid, will be sold at public auction, to the highest bidder, to satisfy the said tax; and the said mayor is hereby empowered to convey the said real estate so sold, to the highest bidder, by conveyances good and sufficient in law. And the said collector, in twenty days after the said warrant and tax-list as aforesaid shall have been delivered to him, shall make return of his proceedings thereon, and pay over all moneys collected by him, to the treasurer of the said corporation, retaining so much as shall be allowed by the said mayor and aldermen, as a compensation for his services, and shall receive a receipt from the said treasurer for the same; and at the expiration of the necessary notice, as to the real estate on which taxes shall remain unpaid, the said collector shall return his warrant to the clerk of the said corporation, together with a specific return of his proceedings thereon. And further, the said taxes, when collected and paid in, shall be appropriated by the said mayor and aldermen, for the benefit and improvement of said city, and the comfort, convenience, and safety of the inhabitants thereof: *Provided nevertheless*, That the taxes so to be levied and collected shall not exceed in any one year, forty cents for every hundred dollars worth of property.

Proviso.

Duties of physicians to be appointed.

SEC. 10. *And be it further enacted*, That all physicians who may be appointed by the said mayor and aldermen, to carry into effect their ordinances, in reference to the preservation of the health of the said city of Mobile, shall be obliged to give their opinions in writing, when thereto requested by the said mayor and aldermen, touching any contagious or malignant fever, prevailing within the said limits of the city of Mobile, or any disease, matter, or thing, which may affect the health or lives of the inhabitants of said city.

Mayor may issue process for breach of by-laws, &c.

SEC. 11. *And be it further enacted*, That the said mayor shall issue his process, as justice of the peace for the city of Mobile, for all offences committed under this act, and for breach of all or any of the by-laws and ordinances of the said corporation, to the police constables appointed by the said corporation, who shall bring the offenders in pursuance of the said process, before the said mayor; and the said mayor shall proceed to try the said offenders, and examine all witnesses that may appear or be subpœnaed before him, both on the part of the corporation and the delinquent, and give judgment, as to him shall appear just and legal, and shall receive the same compensation for the same, as other justices of the peace for the like duties: and if the said persons who may be brought before the said mayor, shall be dissatisfied with the decision of the said mayor, they may forthwith appeal to the circuit court, in all cases where the judgment shall exceed fifty dollars: and the said person or persons shall give a bond with good and sufficient security, to pay and satisfy the judgment with costs, if confirmed, of the said mayor, together with five dollars additional cost, and the proceedings thereon shall be as are prescribed by law, in other cases of appeal.

Mayor and aldermen to fix compensation of officers.

SEC. 12. *And be it further enacted*, That the said mayor and aldermen shall have power, to fix the compensations of all officers under this act, to be by them appointed.

Collector to give bond.

SEC. 13. *And be it further enacted*, That the said collector, constables, and treasurer, appointed by the mayor and aldermen, before they enter on the duties of their respective offices, shall give bonds with good security, to the said mayor and aldermen, in the penalty of five thousand dollars, conditioned for the true and faithful performance of the duties of their respective offices; and which said bond, for any breach of covenant contained in said bond, may be prosecuted in the name of the said mayor and aldermen, as bonds usually are, which are given to incorporated bodies, in any court of record in the county of Mobile.

SEC. 14. *And be it further enacted*, That all other acts and parts of acts heretofore enacted for the government of the town of Mobile, are hereby repealed: saving, so far as the said repeal may interfere with the unfinished business, commenced and progressing under the aforesaid acts.

Former acts repealed.

NOTE.—They have been retained notwithstanding: inasmuch as it may be doubtful to what extent this repealing clause will extend.

CHAPTER XVII.

An Act supplementary to the Act, entitled "An Act to Incorporate the City of Mobile, passed December 17, 1819."—*Passed December* 14, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the corporation of the city of Mobile, shall be, and they are hereby authorized, and directed to cause a complete and accurate survey to be made of the said city, agreeably to the courses and limits prescribed in the act to which this is a supplement, and to establish and fix from time to time, permanent boundaries at such places as they may deem necessary and proper for perpetuating the boundaries of the said city, and to cause the squares into which the said city now is, or may hereafter be divided, to be numbered, and each and every lot contained in said squares to be numbered, beginning at such point as the said corporation may designate, and progressing with the same in the manner they may direct, and also to cause the front and depth of each lot so numbered to be measured, and specified on the survey of the city, and after the said survey shall have been so made, and approved by the corporation, the same shall be admitted to record in the register's office, or in such office, as at the time of completing said survey, shall or may be by law appointed for recording deeds.

Survey to be made.

SEC. 2. *And be it further enacted*, That the said corporation shall have power to widen, extend, and regulate the streets, lanes, and alleys, within the limits of said city: *Provided*, that no street, lane, or alley, now existing, shall be widened or extended so as to infringe upon, or interfere with any dwelling-houses or other house in the occupancy of any inhabitant of said city, without the consent of the owner or claimant thereof: *And provided moreover*, that the street called and known by the name of Government-street, shall be, and the same is hereby declared to be one hundred feet wide, and it shall be the duty of the said corporation to designate and distinctly to mark out the northern limits of said street according as the same were established by the Spanish government, as nearly as can be ascertained by the Spanish records, by the records of the land office, or by any other evidence which they may deem satisfactory, and the limits, when so ascertained, marked out, and designated, shall be the permanent northern boundary of said street.

Powers of corporation.

Further powers. SEC. 3. *And be it further enacted*, That the said corporation shall have power, and they are hereby authorized to alter and change the present names of the streets of the said city, whenever they may deem it expedient, and they shall mark the names when so altered and changed, together with the original names thereof on the map of said city.

Corporation authorized to lay off streets. SEC. 4. *And be it further enacted*, That the said corporation shall have power, and they are hereby authorized to lay out and open new streets, lanes, or alleys, whenever they may deem it expedient within the limits of the said city, under the restrictions herein before laid, and under the following regulations, that is to say: the mayor of the said city shall summon twelve freeholders, inhabitants of the said city, not directly interested in the lands or lots through which it is proposed to open and lay out the said new street or streets, who being first sworn to assess and value what damages would be sustained by the owners of said lots or lands by reason of the opening and laying out of any street, lane, or alley, and the damages so assessed shall be paid by the corporation of said city to the owners of said lots or lands: *Provided always*, that no street, lane, or alley, shall be opened or laid out until the damages assessed to individuals in consequence thereof shall have been paid.

Property not taxable. SEC. 5. *And be it further enacted*, That no property of any description lying beyond the distance of one half of a mile westwardly from the most eastern street of the city aforesaid, shall be liable to taxation by the corporation of the said city.

Appeal. SEC. 6. *And be it further enacted*, That if any person who may be brought before the mayor of the said city, on any charge whatever, shall be dissatisfied in the decision of the mayor, they may forthwith appeal to the circuit court in all cases when judgment shall exceed twenty dollars, giving bond and security as by the eleventh section of the act to which this is a supplement, is prescribed.

Tax. SEC. 7. *And be it further enacted*, That three discreet persons shall be appointed to assess the tax in the same manner as heretofore prescribed in the ninth section of the act to which this is an amendment.

Repealing. SEC. 8. *And be it further enacted*, That all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER XVIII.

An Act to amend the Act to Incorporate the City of Mobile, passed 17th December, 1819.—*Passed December* 12, 1821.

Mayor and aldermen to publish list of receipts. SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the mayor and aldermen for the city of Mobile shall, hereafter, on the first Monday of November in each year, publish in the newspapers printed in said city, a report which shall contain a true statement of the receipts of any and all moneys into the treasury of the corporation, together with an exact and methodical account of the appropriations and disbursements made of such moneys. And for the purpose of carrying into effect the true intent and meaning of this act, the said mayor and aldermen shall keep books, in which shall be entered a statement of all moneys received by them in their corporate capacity, proceeding from taxes or otherwise, as well as an account of all expenditures incurred, or disbursements made, by the said corporation, which books shall be at all times subject to the inspection of persons interested therein.

To keep books.

CHAPTER XIX.

An Act to Incorporate an Aqueduct Company in the City of Mobile.—*Passed December* 20, 1820.

Preamble.

Whereas it has been represented, that it would be of singular advantage to the health and commerce of the city of Mobile, to be supplied with water from some of the running streams in its vicinity, which would be attended with too much labour and expense to be effected by laying a tax for the purpose: *And whereas* it has also been represented, that certain individuals have agreed to associate themselves together for the purpose of conducting a supply of water from a creek called "Three Mile Creek," otherwise Bayou Chatogue, for the use of the citizens and other persons residing in the city of Mobile: Therefore,

Members of incorporation.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Lewis Judson, Addin Lewis, Archibald W. Gordon, William H. Robertson, and Francis W. Armstrong, their heirs, executors, administrators, and assigns, be, and they are hereby created and constituted a corporation, and body politic, by the name and style of "The Mobile Aqueduct Company," and by that name they shall be, and are hereby made able and capable in law to have, purchase, receive, possess, enjoy, and retain to them, and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects of whatever kind, nature, and quality, and the same to sell, grant, demise, alien, and dispose of; to sue and to be sued, plead and be impleaded, answer and be answered, defend and be defended, in any suit, action, matter, or thing depending in any court of law or equity; and also to make, and have, and use a common seal, and the same to break, alter, and renew at their pleasure; and also to ordain, establish, and put into execution such by-laws, ordinances, and regulations as they shall deem necessary and convenient for the government of said corporation, and for the attainment of the object of its creation, not being contrary to this charter, or the laws of this state or of the United States; and generally to do and to execute all and singular the acts, matters, and things which to them may appear necessary, or which to them it may appertain to do, as incident to bodies corporate under the restrictions before mentioned.

Style of incorporation. Corporate powers.

Privileges of the said corporation.

SEC. 2. *And be it further enacted,* That the members of the said corporation be, and they are hereby authorized and empowered, as soon as practicable, and by the best means within their power, and by the nearest practicable route, to dig, or cause to be dug, a channel or canal sufficiently deep and wide to contain logs of an adequate size, with a calibre large enough to contain and conduct a sufficiency of water, to supply the citizens and other persons of Mobile with water, and from time to time, and at all times hereafter, during the continuance of this charter, to enter upon the route and course of the said canal or ditch, as they may deem it necessary, for the purpose of laying, repairing, altering, or amending the said logs, canal or ditch, hereby declaring it lawful for the members of the said corporation, or any or either of them, their successors or assigns, or others employed by them for that purpose, from time to time, as often as in their opinions it may be necessary, to enter upon the lands of any person, through which the said canal or ditch may pass, for the purpose of opening the said canal or ditch, and placing the logs therein, and from time to time, and at all times thereafter, during the continuance of this franchise, to re-enter as often as they may deem it necessary so to do, for the purpose of repairing the aforesaid canal or ditch, or replacing any logs that may be decayed or otherwise injured, they being liable and accountable to the legal owner or owners of the land, through which the said canal or ditch may pass, for any special damages that may be sustained by reason of the aforesaid canal or ditch being dug and continued as aforesaid, which said damage shall be ascertained by appraisers, two of whom shall be chosen by said corporation, and two others by the owner or owners of said land; and in case of difference, the said four appraisers shall choose a fifth appraiser or arbitrator, and the appraisement by them made shall be conclusive on both parties as to the damage done: *Provided nevertheless,* that the said canal or ditch shall not be dug through any lot or lots in the city, but shall be conducted along any of the streets thereof, as may be most practicable.

Accountability of corporation to proprietors of lands.

Corporation to have the exclusive privilege of supplying the city.

SEC. 3. *And be it further enacted by the authority aforesaid,* That the said corporation and their successors shall have and enjoy the exclusive right and privilege of conducting and bringing water for the supply of said city for the space of forty years: *Provided,* the said corporation or their successors shall, before the expiration of three years from the passage of this act, cause to be conducted the water from the said bayou or creek, to the said city of Mobile, in the manner herein before proposed: *And provided also,* that after the expiration of the said term of years, the said water-works shall become the property of the said city, and shall be for the free use of the inhabitants thereof for ever: *Provided also,* the said corporation shall not carry the canal or ditch through the land of any person or persons, without first obtaining from the owner, by purchase or otherwise, the privilege of doing so.

SEC. 4. *And be it further enacted*, That if any person or persons whatsoever, shall wantonly deface, remove, or otherwise injure or disturb the logs placed in the aforesaid canal or ditch, pipe or pipes of lead, or other thing that may lead from the logs aforesaid, or shall remove from above the said logs any earth covering them, or shall obstruct or injure, by logs, bushes, earth, or other materials, the water of the said creek at any place between the source thereof and the place whence the water may be taken or conducted for the use of the said city as aforesaid, he, she, or they so offending, for every such offence shall forfeit and pay the sum of twenty dollars, to be recovered by action of debt before any justice of the peace, one half thereof shall go to the use of the said city of Mobile, and the other to the informer; and moreover, such person shall be liable to pay also any particular damage that may be sustained thereby by the said corporation, and the informer is hereby declared a competent witness to prove any injury done as aforesaid. Penalty for injuring the works.

SEC. 5. *And be it further enacted*, That it shall and may be lawful for the said corporation and their successors, to take, demand, and receive from every private family, any sum, not exceeding one dollar per annum, for each and every person, including servants and children of which said family may consist, in consideration of being supplied with water, as is in this act provided; and for each, and every public house or tavern, the sum of twenty dollars, in addition to the sum demanded of a private family, and for each and every private boarding-house, the sum of fifteen dollars in addition to the rate or sum aforesaid, to be paid half yearly in advance: *Provided*, That no person shall be obliged to pay for any time that the water may be stopped, whether by accident or otherwise, and a proportionable deduction shall be made for all such time as aforesaid: *And provided also*, That no person shall be compelled to pay the sum or sums aforesaid, who does not use directly or indirectly the water conveyed to said city as aforesaid. Perquisites to corporation.

SEC. 6. *And be it further enacted*, That it shall and may be lawful for the corporation aforesaid and their successors to demand, take, and receive for each and every pipe or hogshead of water, conveyed to the city as aforesaid, which may be taken for the use of ships, or vessels, any sum not exceeding seventy-five cents, and in like proportion for casks of smaller size. Same.

SEC. 7. *And be it further enacted*, That any person or persons, inhabitants of said city, who shall use the water conveyed to the city as aforesaid, and shall not have declared his, or her, or their intention so to do, nor have paid the sum or sums by this act authorized to be demanded and received, any such person so offending, shall forfeit and pay double the sum, he, she, or they would have been liable to have paid by the previous provisions of this act, to be recovered by action of debt, before any justice of the peace, to the use of said corporation and their successors. Penalty for using water without license.

SEC. 8. *And be it further enacted*, That the said corporation shall put up, or cause to be put up at least six hydrauts, in six Hydrauts to be planted by corporation.

of the most convenient places, within the said city, and also shall fix a like number of convenient places, for use in case of fire, which places shall be designated by the mayor and aldermen of said city, and the said hydrauts shall be supplied with convenient and good cocks, to facilitate the drawing of the water.

Penalty for injuring hydrauts.

Sec. 9. *And be it further enacted*, That if any person or persons shall wilfully cut, mutilate, or otherwise deface or injure the said hydrauts, or any part thereof, he, she, or they so offending, shall pay a fine of twenty dollars, recoverable by action of debt, before any justice of the peace, for the use of the corporation aforesaid, and if any person or persons shall carelessly or negligently leave the water running, or shall not stop the cock, for every such act, he, she, or they (or if a child) his, or her parent or guardian, (or if a slave) his, or her master, shall pay for every such act of carelessness or negligence, the sum of two dollars, recoverable before a justice of the peace, at the suit of said corporation, and to their use.

CHAPTER XX.

An Act to authorize Josiah Blakeley to lay out a Town on the East side of Mobile Bay.—*Passed January* 6, 1814.

Town to be called Blakeley, may be laid out.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That Josiah Blakeley be, and he is hereby authorized to lay off a town on his land, on the east side of Mobile bay, in Mobile county, which town shall be called, known, and distinguished by the name of "Blakeley."

Plat to be filed.

Sec. 2. *And be it further enacted*, That it shall be lawful for the said Josiah Blakeley to adopt the plat he already has, as the plan of said town of "Blakeley," which he shall record in the clerk's office of the county court of Mobile county, within three months from the passing of this act.

CHAPTER XXI.

An Act concerning Incorporated Towns.—*Passed December* 23, 1815.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That any precept or warrant, issued for any fine or penalty incurred by the breach of any of the by-laws of any incorporated city or town in this territory, may be made returnable forthwith.

CHAPTER XXI.

An Act for the Government of the Port and Harbour of Blakeley.—*Passed December* 20, 1820.

Commissioners of the

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the president and commissioners of the town of Blakeley be, Town to appoint a harbour-master.

and they are hereby authorized to appoint from time to time, as often as may be requisite, some proper person to be harbour-master of the port of Blakeley, and who shall, before he enters upon the duties of his office, take an oath before a justice of the peace, or either of the justices of the county court, truly, faithfully, and impartially to execute the duties required of him by this act.

Powers of harbour-master.

SEC. 2. *And be it further enacted*, That the said harbour-master shall have authority to regulate and station all ships and vessels of every kind in the harbour of Blakeley, within the limits of the corporation of said town, and at the wharves thereof, and also in the rivers Tensa and Appalache, within any distance not exceeding two miles from the foot of Washington-street, in said town, and to remove, from time to time, such ships or vessels as are not employed in receiving or discharging their cargoes, to make room for such others as require to be immediately accommodated, for the purpose of receiving and discharging theirs; and as to the fact of their being fairly and actually employed in receiving and discharging their cargoes; the said harbour-master is hereby constituted the sole judge, and the said harbour-master shall have authority to determine how far, and in what instances it shall be the duty of the master and others having charge of ships and vessels, to accommodate each other in their respective stations; and if any master or other persons shall resist or oppose the said harbour-master in the execution of the duties of his office, such master or other person having charge of any ship or vessel, or other person whatsoever, shall, for every such offence, forfeit and pay the sum of fifty dollars, to be recovered with costs of suit, in the name of the President and Commissioners of the town of Blakeley, before any court having cognizance thereof, all of which fines, when collected, shall be paid to the treasurer of the said town for the use and benefit of the inhabitants thereof.

Penalty for resisting harbour-master.

To remove nuisances.

SEC. 3. *And be it further enacted*, That it shall be the duty of the said harbour-master to superintend and enforce the execution of the laws of this state, and the ordinances of the president and commissioners of the town of Blakeley, for preventing and removing all nuisances whatsoever, on and about the wharves, within the corporate limits of said town, and also to cause to be extinguished, whenever he may think it necessary, all, or any fires that may be made upon any of the wharves within said limits.

Harbour-master to appoint a deputy.

SEC. 4. *And be it further enacted*, That the said harbour-master, in case of sickness or temporary absence, shall have power to appoint a deputy, and the same to remove or displace, and to appoint another in his room.

Compensation to harbour-master.

SEC. 5. *And be it further enacted*, That the said harbour-master shall have power to demand and receive from the commander, owner, or consignees, or either of them, of every ship or vessel, that may enter the port of Blakeley, and load, unload, or make fast to any of the wharves within the limits of said town, at and after the rate of three cents per ton, to be computed from the tonnage expressed in the registers of such ships or

River craft exempt.

vessels respectively, and no more: *Provided always*, That owners, masters, or consignees of flats, keel boats, or other craft, which may be employed in the river trade, shall not be obliged to pay the said fees to the harbour-master, but upon application of any person having charge of such flat, keel boat, or other river craft, the said harbour-master shall interfere and adjust any difference respecting the situation or position of such flat, keel boat, or other river craft; which differences the said harbour-master is hereby authorized to hear and determine. And the said harbour-master may demand and recover in manner aforesaid, from the party in fault in the premises, the sum of two dollars for adjusting such difference, and no more.

Master and wardens, how appointed.

Sec. 6. *And be it further enacted*, That the president and commissioners of the town of Blakeley be, and they are hereby authorized to appoint as often as shall be necessary, one fit and proper person to be master, and three other fit and proper persons to be wardens of the said port of Blakeley, who shall be called the master and wardens of the port of Blakeley. And the master and wardens hereafter to be appointed, shall, before they enter upon the duties of their said offices, severally take an oath before a justice of the peace, or either of the justices of the county court, truly, faithfully, and impartially to execute the powers and duties enjoined on them by law, as master or warden, (as the case may be,) of the port of Blakeley.

Duties of master and wardens—shall keep records

Inspect hatches.

Sec. 7. *And be it further enacted*, That the said harbour-master and wardens shall keep an office in the town of Blakeley, and shall cause to be made in a book, to be kept for that purpose, an entry of all their proceedings by virtue of this act, to which all persons may have recourse. And the said master and wardens, or any one of them, shall, if called upon by the person commanding any ship or vessel arriving from sea, inspect the manner in which the hatches of such ship or vessel were secured, previous to opening thereof, for the purpose of discharging, and shall be present at the opening of the same; and shall, upon every such survey, certify under his hand, how the said hatches appeared to him: for which certificate he shall be entitled to two dollars. And the said masters and wardens, or any two of them, shall be surveyors of damaged goods, brought into the port of Blakeley, in any ship or vessel, and with the assistance of one or more skilful carpenters, shall be surveyors of any damaged vessels, and any vessel deemed unfit to proceed to sea: and they shall, upon every such survey, certify under their hands, how the vessel or vessels so surveyed appeared to them, and shall cause entries to be made in a book, to be kept as aforesaid; and for each certificate and entry, they shall be entitled to two dollars, and for every duplicate thereof, to one dollar. And the said master and wardens shall severally be entitled to receive for their services as surveyors of damaged goods or vessels, at the rate of three dollars per day. And it shall solely belong to the said masters and wardens, or any two of them, to order and direct the sale of damaged goods by public auction, giving notice of such public sale, at least three days be-

Survey damaged goods and vessels.

Compensation as surveyors.

fore such sale is to take place, in some newspaper published in the county of Mobile, or by posting up notice of such sale in two of the most public places in said county; and at least two of said wardens shall be present at such public sale, and shall certify to the truth of the account of sales of the auctioneer, by whom such damaged goods may be sold; and for such attendance and certificate, the said master and wardens shall be entitled to the sum of eight dollars. Direct sale o damaged goods, &c.

CHAPTER XXIII.

An Act to provide for the Government of the Town of Blakeley.—*Passed December* 4, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the free white male inhabitants, of the age of twenty-one, who have resided in the town of Blakeley twelve months, or have become residents at the time of such election, and paid taxes therein the year preceding that in which the election shall be held, shall on the first Monday of December in each year, hold an election in said town; to commence at ten o'clock in the forenoon, and to close at five o'clock in the afternoon, and elect by ballot, and a majority of votes, five commissioners (three of whom shall constitute a quorum to do business,) also a town treasurer, and an assessor, and a collector of taxes, to serve one year, or until their successors be chosen. And the said commissioners shall within three days after such election in each year, meet and elect by ballot from their own number, a president, and the inhabitants of said town shall be, and they are hereby constituted a body politic and corporate with perpetual succession, by the name of "The President and Commissioners of the town of Blakeley;" and by that name they and their successors shall be capable in law, to sue and be sued, to plead and be impleaded, in all manner of suits and actions both in law and equity; and to grant, receive, and do all acts as natural persons, to purchase and hold real, personal, or mixed property for said town, to alien, sell, and dispose of the same, or any part thereof, as to them may seem expedient for the benefit of said town, and to have and use a common seal, which may be broken or altered at pleasure. Qualified voters. Officers. Election of president. Corporate powers.

SEC. 2. *And be it further enacted,* That the limits and boundaries of said town shall continue to be and remain as they are already defined, in a plan of said town recorded in the office of the clerk of the county court of Mobile, agreeably to an act of the territorial legislature, passed the sixth of January, one thousand eight hundred and fourteen. And the corporation of said town are hereby vested with all the powers and rights, which the county court may have in respect to public highways, and are hereby empowered to enforce the same within the limits of said town; and the said corporation are hereby empowered to take such measures from time to time, to lay out streets and Limits of corporation. Additional powers.

alleys, and to accept donations or grants of lots, squares and reserves for public purposes (in addition to those already granted by the late Josiah Blakeley,) as they may think expedient.

SEC. 3. *And be it further enacted*, That the president and other officers in office on the first Monday in December in each year, shall remain in office until successors be elected and appointed: and it shall be the duty of the said five commissioners, or such of them as may attend, to preside at the annual election appointed to be held on the first Monday of December as aforesaid, and to declare the persons duly elected, and when on counting the ballots, there shall appear to be an equal number for two or more persons, it shall be the duty of the judges presiding at such election, to declare which of said persons is duly elected; and in case the whole number of commissioners, or any other officer authorized by this act to be elected on the first Monday of December shall not be then elected, or, if no election shall be had on that day, the president or presiding commissioner so remaining in office, shall appoint another day by public notice given in said town, at least six days previous thereto, for holding an election for commissioners, or any number thereof, or any other officer who may not have been elected as aforesaid, which election shall be held within one month after the first Monday of December, in each year as aforesaid: *Provided*, that the first election which may be held under this act, may be held as aforesaid (the commissioners, or any three of them now in office presiding as aforesaid) at any time before the first day of April next. And in case of the death, resignation, continued absence for six months, or removal from town of any one who may be elected commissioner, treasurer, assessor, or collector, an election as in this section is above prescribed, may be held to supply the vacancy.

Vacancies filled.

Additional corporate powers.

SEC. 4. *And be it further enacted*, That the said five commissioners, or a majority of those present, shall have power and authority, from time to time, and at all times, to make such acts, by-laws, ordinances, orders, and regulations, not inconsistent with the constitution of the United States, and the constitution and laws of this state, as to them may seem expedient for the government and regulation of the said town, and the benefit of its inhabitants, and the same to put in execution, revoke, and alter; and to make, limit, and impose reasonable sums, fines, and amercements, not exceeding fifty dollars in any one case, against all and upon all and every person or persons who may offend against this act, or the acts, by-laws, ordinances, or regulations of the corporation; and the money recovered shall be appropriated as the corporation shall direct for the benefit of said town: *Provided*, that this act and all the ordinances, bylaws, or orders of the corporation, shall be subject to repeal by the general assembly. And the president and commissioners shall have power to adjourn their meetings from time to time, unless sooner called together by a notice from the president. And the president shall notify a meeting, when requested by one of the commissioners; they shall keep a regular journal or record of their proceedings; and the record of the proceedings of each meeting, shall be signed by the president or commissioner presiding at such meeting.

SEC. 5. *And be it further enacted*, That the election of the president shall be entered of record, and it shall be his duty to preside at all meetings of the commissioners, and in case of his absence or inability to attend, any other member may be called to the chair, and perform the duties enjoined on the president. And in case of the refusal of any commissioner to accept the office of president on his election thereto, or of his death, resignation, inability, continued absence for six months, or removal from town, the board of commissioners may elect another in his place to serve the remainder of the term. And the president and each of the commissioners shall *ex-officio*, be justices of the peace within said town, so far only as it relates to carrying into effect all the ordinances, by-laws, and regulations of the corporation. And all process and precepts shall be directed to the officer, whose duty it may be made by said corporation to execute the same. And if any person considers himself aggrieved by the decision of the president or either of the commissioners, he may appeal forthwith to the same authority and under the same regulations as in all cases triable by a justice of the peace, and all trials shall take place at the office of the president and commissioners.

Commissioners *ex officio* justices of the peace.

Appeals may be taken.

Place of trial

SEC. 6. *And be it further enacted*, That in addition to the officers to be elected by virtue of this act, the said president and commissioners shall have power to constitute and appoint such other officers as they may from time to time think necessary, to hold their offices during the pleasure of the president and commissioners, and to be commissioned accordingly. And the treasurer, assessor, collector, and all other officers who may be appointed by the president and commissioners, shall enter into such bond with security to the corporation as may be required of them, and shall receive such compensation for their services as may be fixed, and shall perform such duties as may be enjoined on them, and shall be liable to such fines for neglect of duty and misbehaviour in office as may be imposed on them by the president and commissioners, and the bond or bonds aforesaid, for breach of any covenant contained therein, may be prosecuted in the name of the corporation, in any court of record, as bonds usually are.

Officers to give bond.

Compensation.

SEC. 7. *And be it further enacted*, That the said president and commissioners shall have power and authority to raise such sum or sums of money as they may think necessary, which sum or sums shall be appropriated and disposed of for said town, as the said president and commissioners shall direct: *Provided*, that the tax which may be assessed on property real and personal, shall not in any one year exceed the sum of forty cents for every hundred dollars value. And the tax on each poll shall not exceed three dollars per annum, and the amount which may remain due from any person or persons in any year for taxes

Commissioners impose tax.

Proviso.

Taxation limited.

may be added to, or included in, the lists of the succeeding year or years, and be collected by the then tax collector, in the same manner as the taxes for such year. And the said corporation shall have power to sell to the highest bidder at public auction any real estate in said town for the arrears of taxes due thereon in the following manner: The person who will pay the tax due on the lot for the fewest number of feet front, running back at right angles from the street to the back line of the lot, shall be the purchaser, and the president of the board of commissioners shall issue to the purchaser a certificate of such sale, acknowledging the receipt of the amount of taxes paid, and the cost of selling, and expressing also that the said lot or part of the lot so sold may be redeemed by the proprietor (at the time of such sale,) at any time within two years from the date thereof, upon the payment of the said tax and costs, and ten per centum per annum thereon. And if the said proprietor shall fail to redeem as aforesaid, then said president shall convey to said purchaser or purchasers, the lot or land sold as aforesaid, and the president and commissioners shall have the power and exercise the privilege of granting licenses from time to time, in such manner, for such purposes, and for such sums as to them may seem expedient. And in the month of November annually, the treasurer shall publish in some newspaper an account of the receipts and expenditures of said town for the preceding year.

Real estate, how sold.

May grant licenses.

Treasurer to publish report.

Officers to take oath.

Sec. 8. *And be it further enacted*, That every person elected or appointed by virtue of this act, to any office, shall before he enters on the duties thereof, take and subscribe the following oath, before some magistrate authorized by law to administer oaths, to wit:—"I, —— ——, do solemnly swear, that I will execute the office of ——, with impartiality to all persons, and agreeably to the best of my skill and judgment: So help me God:" a certificate of which shall be produced by the person taking such oath, to be placed on the files of the corporation.

Sec. 9. *And be it further enacted*, That the act, entitled "An Act for the Government of the Town of Blakeley," be, and is hereby repealed: *Provided*, such repeal shall not affect any lawful proceedings had under said act.

CHAPTER XXIV.

An Act to Incorporate the Town of Mooresville, and for other purposes.—*Passed November* 16, 1818.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That the town of Mooresville, in the county of Limestone, in the Alabama territory, be, and the same is hereby established by the name of "Mooresville."

Sec. 2. *And be it further enacted*, That hereafter the landholders, freeholders, and householders within the said town of

Mooresville, on the first Monday in February next, and on that day in each year, shall hold an election, to commence at ten o'clock in the morning, and close at three in the evening, for the purpose of electing by ballot five persons, inhabitants of the town, to act as trustees thereof, a majority of whom shall constitute a quorum to do business; also a town collector, assessor, treasurer, and constable, to serve for one year.

SEC. 3. *And be it further enacted,* That every free white male of full age, who has resided in the town of Mooresville six months previous to the election of the trustees, shall be entitled to a vote for the said trustees.

SEC. 4. *And be it further enacted,* That the said trustees and other officers so elected, shall proceed in the same manner, possess the same powers, and be subject to the same restrictions, as are prescribed by law for the government of the trustees and other officers of the town of St. Stephens.

CHAPTER XXV.

An Act to Incorporate the Town of Athens, in Limestone County.—*Passed November* 19, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That the town of Athens, in the county of Limestone, in the Alabama territory, be, and the same is hereby established, by the name of "Athens."

Name.

SEC. 2. *And be it further enacted,* That hereafter the landholders, householders, and freeholders, within the town of Athens, on the second Monday in March next, and on that day in each succeeding year, shall hold an election, to commence at ten o'clock in the morning, and close at three in the evening, for the purpose of electing by ballot five persons, inhabitants of the town, to act as trustees thereof, a majority of whom shall constitute a quorum to do business; also a town constable, assessor, and treasurer, to serve for one year.

Elect 5 commissioners.

SEC. 3. *And be it further enacted,* That every free white male of full age, who has resided in the town of Athens six months previous to the election of the trustees, shall be entitled to a vote for said trustees.

Who to vote.

SEC. 4. *And be it further enacted,* That the said trustees and other officers so elected, shall proceed in the same manner, possess the same powers, and be subject to the same restrictions as are provided by law for the government of the trustees and other officers of the town of St. Stephens.

CHAPTER XXVI.

An Act to Incorporate the Town of Tukaloosa.—*Passed December* 13, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That an election shall be held at the court-house, in the town of

Commissioners to be elected.

Tuskaloosa, on the first Tuesday of January, in each and every year, to commence at eleven o'clock in the forenoon, and continue two hours thereafter, at which election each and every free white male of the age of twenty-one years, residing on the fraction of land, known as the south fraction of section number twenty-two, township number twenty-one, and range number ten west, and in the northern division of public lands in this state, shall be entitled to choose by ballot and majority of votes, seven householders, residing on said fraction of land, to act as commissioners of said town of Tuskaloosa, for the term of one year after such election; and the said commissioners so elected, shall on the succeeding day after such election in each year, meet and elect by ballot from their own number, a president, also such other town officers as they may think best, but not from among themselves; and the said commissioners, &c. shall be, and they are hereby constituted a body corporate, by the name and style of "The President, Commissioners, &c. of the town of Tuskaloosa;" and by that name, they and their successors in office shall be capable in law, of suing and being sued, of pleading and being impleaded, in all manner of suits or actions, either in law or equity, and also of doing all acts that are incident to towns corporate.

Incorporated.

Powers of commissioners.

SEC. 2. *And be it further enacted*, That the said president shall preside and keep order, at all meetings of the said commissioners; but if he be absent or incapable, any other member may be called to the chair, and perform the duties enjoined on the president; any three of said commissioners shall constitute a quorum to do business, when no more can be had: they shall have authority to raise such sum or sums of money, as they shall think necessary, for the good regulation of said town; which sum or sums shall not be assessed on each householder, at a higher rate than twelve and one half cents, nor more on each free white male citizen, between the ages of twenty-one and forty-five years, nor more on each slave, according to the regulations established by said president and commissioners: they may also remove nuisances, tax shows and exhibitions for pay, and such property as is usual for corporate towns to tax.

May pass by-laws.

SEC. 3. *And be it further enacted*, That the said president and commissioners, shall meet on their own adjournments, and have power from time to time, and at all times, to make such by-laws and regulations in writing, not inconsistent with the laws of this state, or of the United States, as to them shall appear necessary for the order and good government of said town, and the same to put in execution, revoke or alter, as they may think expedient: *Provided*, That this act and any of the by-laws, may be repealed by the general assembly.

Take security of town officers.

SEC. 4. *And be it further enacted*, That the said president and commissioners shall have power to require such security of their several town officers, to annex such fees of office, impose such fines for neglect of duty, or misconduct in the same, as to them may appear proper, and make, limit, impose, and levy, such reasonable fines and amercements, in any one case, not exceeding fifty dollars, against all, and upon all persons who shall offend against the by-laws and regulations for the government of said town, and all such fines and amercements to demand, take, and levy, of the goods and chattels of such offender, by warrant issued under the hand and seal of the president for the time being, directed to a constable, or such other officer as for that purpose may be appointed, who is hereby authorized and required to execute the same: which fines and amercements shall be paid over, as the said president and commissioners shall direct, to be appropriated to the use and benefit of the aforesaid town of Tuskaloosa.

President, &c. to continue in office until successors are elected.

SEC. 5. *And be it further enacted*, That the president and commissioners in office, on the first Tuesday of January in each and every year, shall remain and continue in office, until successors be duly elected: and it shall be the duty of the president or any number of commissioners remaining in office, to preside at the annual election, and declare the persons duly elected at any such election; and when, on counting the ballots, there shall appear to be an equal number for two or more persons, it shall be the duty of the president or commissioners presiding at such election, to declare which of the said persons be duly elected; and in case the whole number of commissioners, authorized to be elected on the first Tuesday in January, of each and every year, shall not then be elected, the said commissioners so remaining in office, shall appoint another day, by public notice given in said term, at least one week previous thereto, for holding an election for commissioners, or any number thereof, who may not have been duly elected on the said first Tuesday in January.

Vacancies, how filled.

SEC. 6. *And be it further enacted*, That in case of the death resignation, or removal from town, of any of the commissioners, the president for the time being, shall call a meeting of the persons entitled to vote by this act, for commissioners, by advertising the same, at least in two public places in said town, one week previous thereto, who shall by ballot proceed to supply the vacancy.

Persons fined may appeal.

SEC. 7. *And be it further enacted*, That if any person or persons feel him, her, or themselves aggrieved by any decision of the president and commissioners of said town; he, she, or they, shall be entitled to an appeal, in the same manner, under the same regulations, and to the same authority, that he, she, or they, would be entitled to, if the decision had been made by a justice of the peace.

CHAPTER XXVII.

An Act to extend the Corporation of the Town of Huntsville, in Madison County.—*Passed December* 17, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in general assembly convened*, That the corporation of the town of Huntsville, shall extend one quarter of a mile from each side of the public square in said town, and be under the same rules, regulations, and restrictions, as are pointed out in the act incorporating the town of Huntsville: which corporation shall not affect the persons or property of Thomas and William Brandon, who reside within the limits of said corporation.*

CHAPTER XXVIII.

An Act appointing additional Commissioners for the Town of Huntsville.—*Passed December* 16, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That John Read, Henry Stokes, and Jesse Searcy, be, and they are hereby appointed additional commissioners for the town of Huntsville, and the said commissioners are authorized to associate with the commissioners now in appointment, and to do all acts which said original commissioners are by law authorized to do.

CHAPTER XXIX.

An Act to Incorporate the Town of Coffeeville, in the County of Clarke.—*Passed November* 22, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the town of Coffeeville, in Clark county, be, and the same is hereby established and incorporated, including the southwest quarter of section nine, in township nine, range one, west of the basis meridian.

Trustees to be elected.

SEC. 2. *And be it further enacted,* That hereafter the landholders, freeholders, and householders within the town of Coffeeville, on the second Monday in March next, and on that day in each succeeding year, shall hold an election, to commence at ten o'clock in the morning, and close at three in the evening, for the purpose of electing by ballot, five persons, inhabitants of said town, to act as trustees thereof, a majority of whom shall constitute a quorum to do business; also a town constable, assessor, collector, and treasurer, to serve for one year.

Who may vote.

SEC. 3. *And be it further enacted,* That every free white male, of the age of twenty-one years and upwards, and who was a resident of said town on the first day of January, preceding the day of election for trustees, shall be entitled to vote for said trustees.

Powers of trustees.

SEC. 4. *And be it further enacted,* That the said trustees and other officers so elected, shall proceed in the same manner, possess the same powers, and be subject to the same restrictions, as are provided by law for the government of the trustees and other officers of the town of St. Stephens.

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* The latter clause repealed in "An Act concerning Wolves and Panthers," passed in 1820.

CHAPTER XXX.

An Act to Incorporate the Town of Montgomery, in the County of Montgomery. *Passed December 3, 1819.*

Limits of the town of Montgomery.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That all that tract of land situate on the east bank of the Alabama river, of the following description, viz.: Fraction number twelve, township sixteen, range seventeen, southeast and southwest quarters of section number seven, township sixteen, range eighteen, including all that part of the river lying opposite to said fraction, within sixty yards of its margin, in the county of Montgomery, is hereby incorporated, and shall be called and known by the name of the town of Montgomery.

Councillors to be elected

Councillors to elect an intendant

Style of corporation.

SEC. 2. *And be it further enacted,* That on the first Monday of January next, and in each and every year thereafter, on the same day, an election by ballot for seven councillors shall be held, at some convenient and public place in said town, who shall serve for the term of one year after they shall have been elected: the first election shall be conducted and managed by Andrew Dexter, Jonathan C. Farley, Walter B. Lucas, Ebenezer D. Washburn; and all subsequent elections shall be conducted by two of the councillors, to be appointed by the board for that purpose; and the said councillors so elected shall, on the next day after such election, in each and every year, meet and elect by a majority of votes, from their own body, an intendant, whose duty it shall be to preside and keep order at all meetings of the said councillors; and in his absence or incapacity, any other member may be called to the chair; and the said councillors shall be, and they are hereby constituted a body corporate, by the name and style of "The Intendant and Council of the Town of Montgomery," and by that name they and their successors in office shall be capable in law of suing and being sued, of pleading and being impleaded, in all manner of suits either in law or equity; also to have and keep a common seal, and the same to break, alter, and amend at pleasure; and in general to do all acts which are incident to bodies corporate, and to purchase, hold, and dispose of, for the benefit of said town, real, personal, or mixed property to the amount of ten thousand dollars.

Corporation may pass by-laws.

SEC. 5. *And be it further enacted,* That the said corporation shall have power to pass by-laws and ordinances, necessary to preserve the health of said town, to prevent and remove nuisances, to establish night watches and patrols, to establish, alter, and ascertain new streets and alleys, with the consent of the proprietors of lots or houses adjoining such streets and alleys, to provide for licensing, taxing, regulating, and restraining theatrical amusements and shows in their said town, to clear and keep in repair the streets and alleys, to have a general control and superintendence over the springs and wells of said town, to establish necessary inspections, to erect and regulate markets and the assize of bread, to regulate the conveyance of water from the vicinity into the town, in general to pass such by-laws not contrary to the constitution of this state and the laws thereof, as the said corporation shall from time to time deem expedient and necessary to carry into effect the meaning and intent of this act, and the same to put in execution, to revoke, and alter as the said corporation shall deem expedient; the said corporation shall also have power to appoint a treasurer, assessor, collector, and constable, and such other subordinate officers as they may think necessary, and by ordinance to require such security from the several officers so appointed, to annex such fees to the several offices, to impose such fines for neglect of duty in office, not exceeding fifty dollars, as they shall deem necessary. They are hereby also empowered to lay such fine or fines, not exceeding ten dollars, for a breach or breaches of their by-laws as they may deem proper; and all fines by them imposed shall be sued for in the name of the corporation, before any justice of the peace, and the money so recovered shall be paid to the treasurer for the benefit of said town: *Provided*, that this act, and all the by-laws and ordinances of the said corporation, shall at all times be subject to revision or repeal by the general assembly.

To appoint a treasurer, assessor, and collector.

Proviso.

Corporation may levy tax.

SEC. 4. *And be it further enacted*, That the said corporation shall have power and authority, annually, to levy and assess a tax, not exceeding one per centum, upon the value of all the real property in said town, to be assessed by the assessor, according to such regulations as they may deem necessary and proper; they shall also have power to lay and collect a poll-tax, not exceeding three dollars, on each white male inhabitant in said town, above the age of twenty-one years: *Provided*, he shall have resided within said town three months immediately preceding the time the tax shall have been laid; they shall have power also to lay and collect a tax on all four-wheeled carriages; also on carts, wagons, drays, or other vehicles for transportation, which are employed in transporting for pay or compensation, any article whatsoever from one place to another, within the limits of said town; and also on all retailers of spirituous liquors, goods, wares, and merchandise, or either of them, not exceeding ten dollars per annum.

Manner of increasing tax.

SEC. 5. *And be it further enacted*, That should the sum or sums, so assessed and collected, be deemed by said corporation insufficient for the supply of said town, the intendant thereof is hereby authorized, by and with the advice of two of said councillors, to call a meeting of the inhabitants of said town, qualified to vote as aforesaid, by giving five days previous notice thereof, and specifying the object of said meeting, and the said inhabitants shall have power, by a majority of votes, to order such further sum or sums to be raised as may be deemed expedient, to be assessed, collected, and paid as the said corporation shall direct.

Sec. 6. *And be it further enacted,* That when vacancies shall happen in the board of councillors, by death, resignation, or otherwise, such vacancies shall be filled by the board, and the member or members so added, shall continue in office until the succeeding annual election.

Vacancies, how filled.

Sec. 7. *And be it further enacted,* That should the elections not take place on the day fixed for the annual election of councillors, the board shall not for that cause be dissolved, but the incumbents shall remain in office, until their successors are elected; and it shall be the duty of the board to fix some other day as early as convenient, within one month thereafter, on which day two of the councillors shall attend, and hold an election for councillors.

Councillors to continue in office until successors are elected.

Sec. 8. *And be it further enacted,* That the said intendant and council shall appoint a clerk, whose duty it shall be to keep a fair record of their proceedings, and to publish the same, and all laws and ordinances, in some public newspaper, or at three several public places in said town.

Clerk to be appointed.

Sec. 9. *And be it further enacted,* That the intendant and councillors first appointed, and their successors in office, shall severally, before they enter upon the duties thereof, take an oath before some person qualified to administer the same, that they will faithfully discharge the duties to them committed, without favour, affection, or partiality; a certificate of which oath shall be filed with the clerk of the board of councillors.

Intendant, &c. to take an oath.

Sec. 10. *And be it further enacted,* That all white male persons above the age of twenty-one years, who shall have resided within the limits of said town three months immediately preceding an election for councillors, and all landholders and freeholders therein, shall be deemed qualified electors at such election.

Who may vote.

Sec. 11. *And be it further enacted,* That each and every person who may be elected a councillor for said town, shall *ex officio* be a justice of the peace within the limits of the same.

Councillors to be *ex officio* justices of the peace.

CHAPTER XXXI.

An Act to establish the Town of Somerville, in the County of Cotaco.—*Passed December* 3, 1819.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the town of Somerville, in the county of Cotaco, be, and the same is hereby established, as the permanent seat of justice in said county.

Sec. 2. *And be it further enacted,* That there shall be an election holden at the court-house in said town, on the first Tuesday in January next, and on that day in each and every year thereafter, to commence at the hour of ten o'clock in the forenoon, and be kept open until the hour of four in the afternoon, for the purpose of electing five persons, inhabitants of said town, to act as trustees thereof; a majority of whom

Trustees to be elected.

shall constitute a quorum to do business; and the said trustees shall elect from their own body a president, who shall preside and keep order at their meetings; they shall also appoint a constable, assessor, collector, and treasurer, who shall serve for one year.

Who may vote.

SEC. 3. *And be it further enacted,* That every free white male person of the age of twenty-one years, who may have resided in said town for three months next preceding the election for trustees, or who may be a freeholder in said town, shall be entitled to vote at such election.

Election, how conducted.

SEC. 4. *And be it further enacted,* That all elections for trustees shall be conducted by a justice of the quorum or peace, and two freeholders, inhabitants of said town.

Trustees incorporated.

SEC. 5. *And be it further enacted,* That the said trustees, when elected, shall be, and they are hereby incorporated, with all the powers and privileges, and subject to the same regulations and restrictions, as are by law prescribed for the incorporation and government of the town of Montgomery, in the county of Montgomery.

CHAPTER XXXII.

An Act to Establish the Town of Triana, and to Incorporate its Trustees.—*Passed November* 13, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the town of Triana, in Madison county, be, and the same is hereby established and incorporated, within the following boundaries, to wit: beginning at the east bank of Indian creek, at its mouth, and running up said bank to a point opposite the mouth of the Barren Fork of said creek; thence west, to the western boundary line of fraction twenty-two, range two, township five, west; thence south with said line, to the Tennessee river; thence south to a place in said river, fifty yards from its bank at low water mark; thence running parallel with the bank of said river, to a point opposite the place of beginning.

Limits.

Who may vote for trustees.

SEC. 2. *And be it further enacted,* That all free white male inhabitants of said town, above the age of twenty-one years, are hereby authorized to vote for five persons residing in the town limits, as trustees of the corporation, who are empowered to superintend the police of said town, by passing such by-laws, not contrary to the laws of the United States, or of this state, as they may think proper, for the government of said town, and for the suppression and removal of nuisances, laying off and repairing the streets and ways, and clearing out such parts of the above-mentioned water courses, as may lie within the above-mentioned boundaries.

Their powers.

May assess taxes.

SEC. 3. The said trustees, or a majority of them, are hereby authorized to assess such taxes, on all property lying within the limits of said town, as they may think proper, for all the purposes of a proper police. Said assessment of taxes, not to exceed one hundred dollars per annum.

Appoint constables.

SEC. 4. There shall be a constable appointed within the limits of said town, whose duty it shall be to collect the aforesaid taxes, and to whom the taxes aforesaid shall be given in upon oath: and the said constable shall receive such per centum, as is received by tax collectors in similar cases.

Election, when held.

SEC. 5. The election for trustees shall be held on the first Monday in December next, and for ever thereafter on the same day in each succeeding year, from ten o'clock until five in the afternoon, under the direction of any two justices of the peace and a constable, in such place in said town, as said justices of the peace may appoint.

CHAPTER XXXIII.

An Act to amend an Act passed at Huntsville, on the thirteenth day of November, in the year 1819, Incorporating the Town of Triana.—*Passed December* 20, 1820.

Election of president.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the trustees of the town of Triana shall, within three days after their election, proceed to elect by ballot, from their own body, a president; and the person having the highest number of votes, shall be the president for the year ensuing such election. That said president and trustees shall be styled "The President and Board of Trustees of the Town of Triana;" any three of whom shall be a quorum to do business; they may have and use a seal which may be broken or altered at pleasure: and under the style aforesaid, they may sue and be sued, implead and be impleaded, grant, receive, and do all other acts which natural persons may do; and may purchase and hold real, personal and mixed estate, (not exceeding at any one time ten thousand dollars,) or dispose of the same for the benefit of the said town.

Powers.

President *ex officio* justice of the peace.

SEC. 2. *And be it further enacted,* That the said president shall be *ex officio* vested with all the power and authority that justices of the peace are vested with by the laws of this state; and shall and may exercise the same within the limits of said town, under the same penalties and restrictions to which justices of the peace of this state are, and may be liable.

Duty of president.

SEC. 3. *And be it further enacted,* That the said president shall issue his process as justice of the peace for the town of Triana, for breach of all or any of the by-laws and ordinances of said corporation, to the police constable appointed by said corporation, or in his absence to any constable of the county, who shall bring the offender or offenders, in pursuance of the said process, before the said president, who shall proceed to try the offender or offenders, and examine all witnesses that may appear, or be subpœnaed before him, both on the part of the corporation and the delinquent, and give judgment as to him shall appear just and legal, and shall receive the same compensation for the same, as other justices of the peace, for the like duties, and if the said person or persons who may be brought before the said president, shall be dissatisfied with the decision of the said president, they may forthwith appeal to the circuit court in all cases; and the said person or persons so appealing shall give bond with sufficient security, to pay and satisfy the judgment with costs, of said president, if affirmed by the circuit court, and the proceedings thereon shall be such as are prescribed by law in other cases of appeal.

Constable elected annually.

SEC. 4. *And be it further enacted*, That a constable shall be annually elected, by the qualified electors of said town, at such time and place as a majority of the trustees may direct, giving at least ten days notice of the time and place of holding such election; who shall enter into bond with sufficient security, to be approved by a majority of the board of trustees, in the sum of two hundred dollars, for the faithful performance of the duties of his office, and which said bond for every breach of covenant contained therein, may be prosecuted in the name of "The President and Board of Trustees of the Town of Triana;" as bonds usually are, which are given to corporated bodies, in any court of record in the county of Madison.

Vacancies, how filled.

SEC. 5. *And be it further enacted*, That if any constable elected as aforesaid, shall refuse to qualify, resign, remove, die, or be otherwise disqualified from acting, the said trustees, or a majority of them, shall order another election as soon as practicable; giving at least ten days notice.

Treasurer appointed.

SEC. 6. *And be it further enacted*, That a majority of said trustees shall have power to appoint annually, from their own body, a treasurer, who shall give bond with sufficient security, to be approved by a majority of said trustees in such sum as they may deem expedient, for the faithful discharge of the duties of his office, recoverable in like manner as the constable's bond.

Oath.

SEC. 7. *And be it further enacted*, That the inhabitants of the said town be exempted from working on all public roads and highways, except within the limits of the corporation aforesaid.

SEC. 8. *And be it further enacted*, That the trustees and other officers elected for the government of said town, shall severally take an oath before a justice of the peace, faithfully and impartially to discharge the duties of their office so long as they continue in the same.

Vacancies, how filled.

SEC. 9. *And be it further enacted*, That in case of the refusal of any trustee, to accept the office of president upon his election thereto, or of his death, resignation, inability or removal from town, the said board shall elect another in his place to serve the remainder of the year; and in case of the death, refusal to act, resignation, inability or removal from town of any of the trustees, a new election shall be called by the president, and shall be held as heretofore prescribed for the election of another in his place, to serve the remainder of the year.

CHAPTER XXXIV.

An Act to Establish and Incorporate the Town of Russelville, in the County of Franklin.—*Passed November* 27, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the town of Russelville in the county of Franklin be, and the same is hereby established in conformity with the plan adopted by the trustees of the aforesaid town.

Election of trustees, &c.

SEC. 2. *And be it further enacted*, That there shall be holden in the said town of Russelville, an election on the first Monday in January next, and on that day in each and every year, from the hour of ten o'clock in the forenoon, until the hour of four in the afternoon, for the purpose of electing five persons, inhabitants of the town, to act as trustees thereof, a majority of whom shall constitute a quorum to do business; also a town constable, assessor, collector and treasurer, to serve for one year: *Provided*, That this act or any of the by-laws, may at any time be repealed by the general assembly.

Proviso—subjecting to repeal.

Councillors, how elected.

SEC. 3. *And be it further enacted*, That every free white male of full age, who has resided in the town of Russelville three months previous to the election of the trustees, shall be entitled to vote for said trustees.

Procedure, &c. to be as in St. Stephens.

SEC. 4. *And be it further enacted*, That the said trustees and other officers so elected, shall proceed in the same manner, possess the same powers, and be subject to the same restrictions, as are provided by law for the government of the trustees and other officers of the town of St. Stephens.

CHAPTER XXXV.

An Act to incorporate the Town of Moulton, in the County of Lawrence.—*Passed December* 17, 1819.

Commissioners and other town officers to be elected.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the freeholders, householders, and landholders of the town of Moulton shall, on the second Monday in March next, and in each and every year thereafter, in said town, hold an election, to commence at ten o'clock A. M. and close at five o'clock P. M.; and then and there elect by ballot five commissioners, a majority of whom shall constitute a quorum to do business; also a treasurer, assessor, collector, and constable to serve for the term of one year; and the said commissioners so elected shall, on the next day after such election, in each and every year, meet and elect one person from their own body as president, whose duty it shall be to preside and keep order at all meetings of said commissioners, and the said commissioners shall be, and they are hereby constituted a body corporate, by the name and style of the "President and Commissioners of the Town of Moulton," and by that name they and their successors in office shall be capable in law of suing and being sued, implead and being impleaded, in all manner of suits and actions either in law or equity; and also to do all acts which are incident to bodies corporate.

Style of corporation.

Commissioners may lay a tax.

SEC. 2. *And be it further enacted*, That the said commissioners shall have power and authority to raise such sum or sums of money as they may think necessary for the well regulation of said town; which sum or sums shall be assessed on the landholders, freeholders, and householders, and also on all billiard-tables, and puppet-shows within the said town, by the assessor, according to the regulations to be established by said president and commissioners, and shall be collected by the collector at such time or times, and be paid and disposed of in such manner as the said commissioners shall direct: *Provided*, the whole amount of such sum or sums shall not, in any one year, exceed twenty-five cents on every hundred dollars worth of property subject to taxation.

Pass by-laws. SEC. 3. *And be it further enacted*, That the said commissioners shall meet on their own adjournments, and shall have power from time to time, and at all times hereafter, to make such by-laws and regulations, not inconsistent with the constitution and laws of the United States or of this state, as to them shall appear necessary for the good government of said town; and the same to put in execution, revoke, or alter as to them shall appear expedient; and the said president and commissioners, appointed agreeably to the provisions of this act, are hereby empowered to require good and sufficient bond with security from the several officers herein intended to be appointed, and to annex such fees to these several offices as they may deem necessary, and impose such fines and penalties for neglect of duty as may appear to them proper; and to make, limit, and impose all fines and amercements, upon those who may offend against the by-laws by them made, not exceeding in any case the sum of fifty dollars; and all such fines and amercements to take, demand, and levy, of the goods and chattels of such offender, by warrant issued under the hand and seal of the president, directed to the town constable, who is hereby authorized and required to execute the same; which fines and amercements shall be paid to the treasurer, to be appropriated to the use and benefit of the said town.

Impose fines.

Elections, how conducted. SEC. 4. *And be it further enacted*, That the elections intended to be held as mentioned in this act, shall be conducted by a justice of the peace and two householders, in the said town of Moulton.

CHAPTER XXXVI.

Extract from an Act to apportion the Representatives among the several Counties in this Territory, according to the Returns of the late Census, and for other purposes.—*Passed November* 16, 1818.

SEC. 3. *And be it further enacted*, That from and after the adjournment of the present session of the legislature, the seat of government for the Alabama territory shall be established permanently at the town of Cahawba.

CHAPTER XXXVII.

An Act providing for the temporary and permanent Seats of Government.—*Passed November* 21, 1818.

Governor locate site. SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the governor be, and is hereby authorized to conclude with the executive of the United States, such arrangements respecting the location of the site of the seat of government, at the confluence of the Alabama and Cahawba rivers, as he may deem necessary, to carry into effect the act of congress in that behalf, passed at its last session.

Commissioner.

Sec. 23. *And be it further enacted*, That the governor of the Alabama territory aforesaid be, and he is hereby appointed a commissioner, with full power to lay off or cause to be laid off, on such plan as he may deem most suitable, a town at the place now called and known as the town of Cahawba.

Lay off lots.

Sec. 3. *And be it further enacted*, That the governor as aforesaid shall cause such a number of lots, of such size or sizes as he may think proper, to be laid off and surveyed on such site, and shall moreover cause to be distinguished each corner of each lot, by a stake exhibiting its proper number, from number one progressively.

Give 90 days notice of sale.

Sec. 4. *And be it further enacted*, That when the governor, as aforesaid, shall have caused said number of lots to be so laid off, surveyed, and distinguished, it shall be his duty, giving at least ninety days notice, to advertise the same for sale in all the newspapers printed in this territory, and in such of the newspapers of the several states as he may deem proper, and he shall cause to be posted up in the land offices at the town of Cahawba and Huntsville, a correct plan or map of the said town of Cahawba, for a period of thirty days previous to the day of the sale of the said lots, specifying the sizes of the lots, and the names of the streets.

Sell to the highest bidder.

Sec. 5. *And be it further enacted*, That the governor aforesaid shall, at the time so appointed for that purpose, proceed on each lot to be offered for sale, to sell the same to the highest bidder, who shall pay one fourth of the purchase money in hand, and shall receive from the governor aforesaid, a certificate under his hand, specifying the lot so purchased, by its number, the price of the same, the amount paid, and that if said purchaser shall make complete payment for the same, by paying one fourth of the purchase money one year thereafter; one fourth two years thereafter; and one fourth three years thereafter: that such purchaser, or his assignee, shall be entitled to receive a patent or grant for the same, from the governor for the time being, of the state or territory, under the seal of the same, vesting in such purchaser, or his assigns, a complete title to the lot so by him purchased and paid for: *Provided*, that all certificates, given as aforesaid, shall be transferable by endorsement, and the assignee or assignees shall be entitled to all the rights and benefits to which the first purchaser was or would have been entitled: *And provided*, that if full payment be not made before the expiration of the day appointed for the payment of the last instalment, each and every payment previously made shall be forfeited to the territory or state, and all lots on which full payment shall not have been made as aforesaid, shall revert to the territory or state.

Grant patents.

Forfeiture.

Money to be deposited in treasury.

Sec. 6. *And be it further enacted*, That so soon as the sale of said number of lots shall be closed, the amount of money which may be received by the governor as aforesaid, shall be paid by him into the territorial treasury, subject to the future disposal of the legislature, and a complete return of the lots by him sold, with the price of each. and the name of the purchaser, shall also be made by the governor as aforesaid, to the territorial treasurer, to whom all payments by any purchaser shall be thereafter made; who shall give receipts for the same, when they shall be paid respectively; and whose final receipt in full of all payments due for any lot, shall authorize the issuance of the grant or patent herein provided for.

Ten per cent. interest.

SEC. 7. *And be it further enacted*, That when any instalment of the purchase money of any lot shall not be paid at the time stipulated for that purpose, interest, at the rate of ten per centum per annum from the time of the sale till payment shall be made, shall immediately accrue and become payable on each and every such instalment: *Provided also*, that any purchaser may make payment of any instalment at any time before the same may become due, and in such case shall be entitled to a deduction, at the rate of ten per centum per annum, for the time to elapse before the same is due.

Proviso.

Absence.

SEC. 8. *And be it further enacted*, That in case of the death, resignation, or absence of the governor, as aforesaid, the powers given by this act shall be vested in the secretary of the territory.

Erect temporary buildings.

SEC. 9. *And be it further enacted*, That the governor may, and he is hereby authorized out of the proceeds of the sale of said lots, to contract for, and cause to be erected, a building suitable for the temporary accommodations of the general assembly of the territory or state, (until permanent buildings may be hereafter provided) and report the situation of the same, together with the amount of money expended therein, to the next session of the general assembly, to be held at Huntsville: *Provided*, the sum or sums appropriated and expended in erecting and completing the said building, to be made by authority of this act, shall not exceed ten thousand dollars.

Huntsville, temporary seat of government.

SEC. 10. *And be it further enacted*, That the temporary seat of government shall be and remain at Huntsville, until suitable buildings and accommodations can be provided at the town of Cahawba, when the governor for the time being, shall by proclamation, be authorized to make known the fact, and require the legislature to convene on the day appointed for their next session thereafter, at the said town of Cahawba.

Time to remove records.

SEC. 11. *And be it further enacted*, That all officers who are required by law, to keep their offices at the seat of government, shall be allowed till the meeting of the convention, or next legislature, to remove the same to Huntsville, and the necessary expenses of the removal, of the public seal, books, records and papers, shall be defrayed by the territory.

CHAPTER XXXVIII.

Extract from the Constitution relating to the Town of Cahawba.

ARTICLE III.

Sec. 29. The first session of the general assembly shall commence on the fourth Monday in October, next, and be held at the town of Huntsville, and all subsequent sessions at the town of Cahawba, until the end of the first session of the general assembly, to be held in the year one thousand eight hundred and twenty-five; during that session the general assembly shall have power to designate by law, (to which the executive concurrence shall not be required) the permanent seat of government, which shall not thereafter be changed: *Provided, however,* that unless such designation be then made by law, the government shall continue permanently at the town of Cahawba: *And provided also,* that the general assembly shall make no appropriations previous to the year one thousand eight hundred and twenty-five, for the building of any other state-house than that now provided for by law.

CHAPTER XXXIX.

An Act for the Government of the Town of Cahawba.—*Passed December 3,* 1819.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That all that tract of land granted by congress to this state for the seat of government thereof, shall be deemed and taken to be within the limits of the town of Cahawba.

Limits of the town.

Sec. 2. *And be it further enacted,* That on the first Monday in January next, and on the first Monday in January every year thereafter, between the hours of ten o'clock in the forenoon, and four o'clock in the afternoon, an election by ballot for seven councillors shall be held at some convenient and public place in said town: and that all free white male persons above the age of twenty-one years, who shall have resided within the limits of said town three months immediately preceding such election, and all landholders and householders therein, shall be entitled to vote for said councillors: and when the poll shall be closed, the managers of the election shall proclaim the result, and give notice thereof to the persons so elected: whereupon, the said councillors shall meet and elect by ballot, from their own body, an intendant, whose duty it shall be to preside and preserve order, at all meetings of the council.

Election of councillors.

By whom elected.

Intendant, how elected.

Sec. 3. *And be it further enacted,* That Willis Roberts, Luther Blake, and Carlisle Humphreys, shall be, and they are hereby appointed, managers of the first election, and the intendant for the time being shall appoint proper persons, as managers of the elections to be held thereafter; and when the said intendant and councillors shall be elected, as aforesaid, and before entering upon his or their office, he or they shall respec-

Managers of the first and subsequent elections.

tively take the following oath, before some justice of the peace for the county of Dallas, as intendant and councillors of the town of Cahawba, to wit:—"I —— ——, will equally and impartially, to the best of my skill and ability, exercise the trust reposed in me, and will use my best endeavours, to carry into effect the purpose for which I have been appointed: So help me God."

Oath of office.

Vacancies, how filled.

SEC. 4. *And be it further enacted*, That in case of the death of the intendant, his resignation, removal from office, or absence from the state, the councillors shall thereupon fill such vacancy, and in case of vacancy in the council, by death or otherwise, the intendant and council shall fill such vacancy, until the next election: and in case the intendant or any of the council, whilst in office, shall be guilty of any wilful neglect, malpractice, or abuse, on information being filed of the same in any court having cognizance thereof, upon conviction thereof, shall forfeit and pay a sum not exceeding two hundred dollars, for every such wilful neglect, or malpractice, or abuse, the money to be recovered by the solicitor for the circuit in which the town may be, and lodged with the clerk of the circuit court of the county of Dallas, for the use and benefit of the town. In case of the absence or non-attendance of the intendant, the town council shall be empowered to elect one to act in his room, on any such occasion.

Delinquent councillors, how punished.

Intendant may summon council, &c.

SEC. 5. *And be it further enacted*, That the said intendant shall and may, as occasion may require, summon the members of the council to meet together, any four of whom with the intendant, may constitute a quorum to do business; and they with the intendant shall be known by the name of, and are hereby declared to be, "The Town Council of Cahawba," and they, and their successors hereafter to be elected, shall have a common seal, and may purchase, have, and hold, possess, receive, enjoy, and retain, to them and their successors in perpetuity, or for any term of years, any estate or estates, real or personal; of what nature or kind soever, not exceeding in value ten thousand dollars, and may sell, alien, exchange, or lease the same, or any part thereof as they may think proper, and by the same name, sue and be sued, answer and be answered unto, implead or be impleaded, in any court of law or equity, within this state; and they also shall have full power and authority to make and establish all such rules, by-laws, and ordinances respecting the streets, markets, buildings, carriages, wagons, carts, drays, and police of said town, that shall appear to them requisite and necessary for the security, welfare, and convenience of said town, or for preserving health, peace, order and good government within the same; and the said town council may affix fines for offences against their by-laws, not exceeding fifty dollars for every such offence, to be recovered before any magistrate; all which fines, when recovered, shall be applied to the use of said town; and the said town council may assess a tax, on the inhabitants of the town, not exceeding one third part of the amount of the general tax which is paid for property within the

Style.

Have a common seal.

May affix fines for offences.

Proviso. Proviso.

limits of the town: *Provided*, that nothing herein contained shall authorize said town council, to make any by-laws repugnant to the constitution and laws of this state: *And provided also*, that this act, and all the by-laws and ordinances of the corporation, shall at all times be subject to revision, or repeal, by the general assembly.

Councillors shall be *ex officio* justices.

Sec. 6. *And be it further enacted*, That the intendant, and each and every one of the council, *ex officio*, shall be vested with all the powers and authorities that justices of the peace are vested with, by the laws of this state, and shall and may exercise the same within the limits of said town, under the same penalties and restrictions, to which justices of the peace of this state are, and shall be subject and liable.

Their proceedings in case of tumult, &c.

Sec. 7. *And be it further enacted*, That in case of tumult or riot, or appearance or probability of tumult or riot, in the said town, the intendant shall immediately summon together the town council, and order the constable of the town to attend the town council, and such measures shall thereupon be taken, as shall appear most advisable, for preventing or suppressing such riot or tumult; and if any town constable shall neglect or refuse to obey the order for attendance from the intendant, he shall forfeit a sum not exceeding fifty dollars, for every such offence; and any other inhabitant refusing to obey the orders of the intendant, for the purpose of suppressing any riot or tumult, he shall forfeit a sum not exceeding ten dollars, for every such refusal.

May commit offenders to jail.

Sec. 8. *And be it further enacted*, That the said town council, shall have full power and authority, from time to time, to commit to close prison in the jail of Dallas county, for any time not exceeding three days, all such person or persons who shall incur any penalty and forfeitures, intended to be inflicted by any of the by-laws of said corporation passed conformable to the powers vested in them by this act.

May appoint town officers.

Sec. 9. *And be it further enacted*, That the intendant and council shall have power to appoint an assessor, a treasurer, clerk, constable, and all other officers, (affixing the salaries and fees of such offices respectively) as shall appear to them requisite and necessary for carrying into effectual execution all the by-laws, rules, and ordinances they may make, for the good order and government of the town, which officers, when so appointed, shall be bound for the faithful discharge of their respective duties, in such manner as the council shall prescribe.

To have powers as to certain public roads.

Sec. 10. *And be it further enacted*, That the intendant and town council of Cahawba, are hereby declared to possess, and are invested with all the powers and privileges which the county court may have, in respect to public roads, and are hereby empowered to enforce the same, in the limits of the town of Cahawba, and no further.

May grant certain licenses.

Sec. 11. *And be it further enacted*, That the said town council shall have and exercise the privileges of granting licenses for retailing of spirituous and other liquors, and for keeping billiard-tables, in the said town of Cahawba.

CHAPTER XL.

An Act to provide for the Sale of Lots in the Town of Cahawba, and for other purposes.—*Passed December* 4, 1819.

Governor may lay off and sell 200 lots.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the governor be, and he is hereby authorized and invested with full power, to lay off an additional number of lots in the town of Cahawba, not exceeding two hundred; and expose to sale the whole or any part thereof, under the same rules and regulations as are prescribed by the act, entitled "An Act providing for the temporary and permanent Seat of Government," passed the twenty-first day of November, eighteen hundred and eighteen.

Governor required to deposit a map with secretary of state.

SEC. 2. *And be it further enacted,* That it shall be the duty of the governor as aforesaid, to deposit in the office of secretary of state, an accurate delineation of the plan of said town, designating the respective reservations, and for what purposes.

Governor to make reservations for certain uses.

SEC. 3. *And be it further enacted,* That the governor as aforesaid shall select and reserve one square for the use of an academy, one square for a court-house and other public buildings for the county of Dallas, and four lots for churches, and the said squares and lots, when so selected and reserved, shall be, and are hereby declared, granted, and set apart for those purposes respectively.

SEC. 4. *And be it further enacted,* That the lot or parcel of land, numbered one hundred and fifty-one in the plan of the town, as now laid off, be, and the same is hereby appropriated and set apart for the erection of such buildings for the accommodation of the executive, as the general assembly may hereafter deem necessary and proper.

Commissioners to take charge of public property.

SEC. 5. *And be it further enacted,* That John Taylor, sen. Alexander Pope, Waller O. Bickley, John Howard, John W. Rinaldi, and Thomas Casey, be, and they are hereby appointed commissioners, whose duty it shall be, under the directions of the governor, to take charge of the lands and property belonging to the state, within the limits of said town, and to rent annually the ferries, and such portions of said lands as are cleared, in such manner and such conditions as to them may appear best calculated to promote the public interest, and make report to every annual legislature, within the two first weeks of their session.

No person to cut or kill timber.

SEC. 6. *And be it further enacted,* That if any person, or the slave of any person, shall cut down, or kill any tree or trees on the land aforesaid, without leave in writing of the commissioners aforesaid, shall forfeit and pay a sum not exceeding ten dollars, for every tree so cut down or killed, to be recovered with costs, before any justice of the peace; and the said commissioners are expressly enjoined to prosecute any and every person so offending.

Commissioners may con-

SEC. 7. *And be it further enacted,* That the above named commissioners, or a majority of them, be, and they are hereby appointed commissioners on the part of the state, to contract with any person or persons for building a bridge across the Cahawba river, at such point within the limits of the town of Cahawba, as they may deem best calculated to enhance the value of the lots, lying between the Alabama and Cahawba rivers: *Provided* said bridge can be built without obstructing the navigation of said river. tract for bridge over the Cahawba.

SEC. 8. *And be it further enacted,* That a sum not exceeding four thousand dollars be, and is hereby appropriated to defray the expenses of building said bridge, which sum of money shall be raised from the sale of lots hereafter to be made in said town. Appropriation.

SEC. 9. *And be it further enacted,* That said commissioners shall give at least sixty days notice, in two of the public newspapers of this state, of the time and place of letting said bridge; and the said commissioners shall, so soon as said bridge may be completed, agreeable to contract, receive the same and report thereon to the governor of this state, whose duty it shall be to pay such undertaker or undertakers agreeable to contract, out of any moneys raised as above directed; and the said undertaker or undertakers shall be bound to keep said bridge up and in good order for the term of seven years. Commissioners to give notice.

CHAPTER XLI.

An Act to amend an Act, entitled "An Act for the Government of the Town of Cahawba," passed at Huntsville, December 3, 1819.—*Passed December* 18, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, a majority of the town council of Cahawba shall have authority and be empowered to transact business, and that so much of the fifth section of the act, entitled "An Act for the Government of the Town of Cahawba," passed at Huntsville, December the third, eighteen hundred and nineteen, as requires a greater number, be, and the same is hereby repealed. Majority to do business.

SEC. 2. *And be it further enacted,* That the power and authority of the intendant, and each and every of the council to act as justices within the limits of the town of Cahawba, shall be restricted to the enforcing the by-laws and ordinances, which may be passed conformably to this act, and the act to which this is an amendment. Jurisdiction limited.

SEC. 3. *And be it further enacted,* That the intendant and town council of Cahawba, shall have full power and authority to appoint patrols in said town, and to define their duties. Appoint patrols.

CHAPTER XLII.

An Act, amendatory of an Act, entitled An Act to provide for the Sale of Lots in the Town of Cahawba, and for other purposes. And of an Act, entitled An Act providing for the temporary and permanent Seat of Government.—*Passed November* 14, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That on all lots already sold, or hereafter to be sold in the town of Back interest remitted.

Cahawba, by the governor for the benefit of the state, under the provisions of an act, entitled "An Act to provide for the Sale of Lots in the Town of Cahawba, and for other purposes;" and of an act, entitled "An Act providing for the temporary and permanent Seat of Government," interest shall not accrue to the state, only from the time the payments respectively become due, and shall be demanded and exacted on each payment, only at the rate of eight per centum.

Repealing clause.

SEC. 2. *And be it further enacted*, That all acts and parts of acts repugnant to, or inconsistent with this act or any part thereof, be, and the same are hereby repealed.

CHAPTER XLIII.

An Act to vest certain Lots in the Intendant and Council of the Town of Cahawba, and for other purposes.—*Passed December* 20, 1820.

Reserve for grave-yard.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the square of lots in the town of Cahawba, bounded west and east by Beech and Ash streets, and north and south by fifth and sixth South streets, and reserved by the governor for a grave-yard, be, and the same is hereby vested in the intendant and council of said town, and their successors in office, for the purpose of a public grave-yard, under such rules and regulations as the said intendant and council may from time to time ordain and establish relative thereto, and for the benefit of the inhabitants of said town.

Certain streets extended.

SEC. 2. *And be it further enacted*, That all the cross streets in said town be continued in an easterly direction to the margin or water's edge of the Alabama river, and that the same be, and are hereby declared to be public streets to the margin of the river as aforesaid.

Landing to be opened.

SEC. 3. *And be it further enacted*, That the commissioners of the public lands of the town of Cahawba be, and they are hereby directed and required to open and make a good and sufficient ferry landing on the Alabama river where Arch-street strikes said river, and that they keep the same in repair; to be paid out of any moneys arising from the rents of the reserve lands and ferries of the town not otherwise appropriated: *Provided*, the same shall not exceed the sum of four hundred dollars.

Governor directed to lay off lots.

SEC. 4. *And be it further enacted*, That the governor be, and he is hereby authorized and invested with full power to lay off in convenient lots, the lands belonging to the state in the town of Cahawba, on the margin of the rivers Cahawba and Alabama, between first and third north streets, and expose the same to sale, under the same rules and regulations as lots have been heretofore sold in the town of Cahawba.

CHAPTER XLIV.

An Act to authorize the Governor to pay to the Town Council of Cahawba Two Thousand Dollars, on Account of the Bridge which they are now building in the Town of Cahawba.—*Passed December* 15, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the governor be, and he is hereby authorized to pay or cause to be paid to the town council of Cahawba, the sum of two thousand dollars, part of the sum heretofore appropriated, out of any moneys which may have arisen from the sale of lots in said town, for the purpose of enabling the said council to carry on and complete the bridge now erecting across the Cahawba river, so soon as the said council shall have executed a bond to the governor for the sum of four thousand dollars, conditioned that the said sum of two thousand dollars, with all legal interest thereon, shall be returned to the governor of the state, within twelve months from the passage of this act, if the said bridge shall not be completed within that time.

CHAPTER XLV.

An Act authorizing a Lottery for the Building of a Bridge over Clear Creek, within the Limits of the Town of Cahawba.—*Passed December* 11, 1820.

Commissioners appointed.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That it shall and may be lawful for Henry Hitchcock, Alexander Pope, Thomas Casey, Uriah G. Mitchell, and Edmund Lane, or a majority of them, to raise by lottery, in one or more classes, as to them may seem most convenient and necessary, any sum of money not exceeding two thousand dollars, to be appropriated in building and completing a bridge over Clear creek, within the limits of the town of Cahawba, and the said Henry Hitchcock, Alexander Pope, Thomas Casey, Uriah G. Mitchell, and Edmund Lane, or such of them as may choose to act, shall before they enter upon the duties of their office, enter into a bond, in the penal sum of ten thousand dollars, payable to the governor and his successors in office, with such security as shall be approved by the governor, conditioned for the faithful discharge of the several duties imposed upon them by this act; which bond may from time to time be put in suit, in the name of the said state, by any person injured by a breach thereof; and it shall be the duty of the said managers, within ninety days from the completion of the drawing of said lottery, to pay to the fortunate person or persons, or to his, her, or their order, all such prizes as may be due agreeable to the scheme which they may have determined upon, and published by them: the said lottery shall be drawn in the town of Cahawba, or at such other place as may be most expedient, giving due notice of the time and place of such drawing; each of the said managers, and each

Their duty.

clerk that may be employed, shall, before the drawing commences, take an oath to act fairly and impartially in the discharge of his several duties, which oath may be administered by any justice of the peace. If the said lottery, or any class thereof, be not drawn within one year after the scheme of the same may have been published, the same shall cease, and the said managers shall refund on demand the price of the ticket to the holder of the same.

To build bridge. SEC. 2. *And be it further enacted*, That the aforesaid managers, are hereby required and authorized to contract for the building and completing the aforesaid bridge, at such place and on such plan as they may deem most convenient and proper, out of the funds that may be raised by the lottery. It shall be the duty of the managers within six months after the passage of this act, and at all such times thereafter, as they may be required, to report to the intendant and town council, of the town of Cahawba, the progress made in the sale of the tickets, the drawing of the lottery, and the erection and completion of said bridge.

CHAPTER XLVI.

An Act to authorize the Governor to sell Lots on the Public Lands, East of Alabama River, and opposite the Town of Cahawba.—*Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the acting governor be authorized, and he is hereby required, to cause to be laid out, and exposed to sale, on the public lands, on the east side of the Alabama river, opposite the town of Cahawba, under the same rules and regulations that lots in Cahawba have been sold, a number of lots containing one half acre each, and not exceeding the number of fifty.

CHAPTER XLVII.

An Act to provide for the Enclosing the Public Buildings in the Town of Cahawba, and for other purposes.—*Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the secretary of state be, and he is hereby authorized and required to have the lot, on which the public building in the town stands, enclosed in a cheap and substantial manner, and to have shutters for the windows made and hung in such manner as he shall direct, and the expenses of the same shall be paid out of any money in the treasury, arising from the sale of lots in the town of Cahawba, not otherwise appropriated, on the certificate of the secretary of state that the same is completed.

CHAPTER XLVIII.

A Resolution authorizing the Treasurer to receive Comptroller's Warrants for Money due for the Sale of Lots in Cahawba.—*Passed December 21, 1820.*

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That the warrants of the comptroller of public accounts, issued according to the provisions of the act making it the duty of the comptroller to issue printed warrants, passed at the present session, be received into the treasury of this state for all sums of money which may be now due, or shall become due during the year 1821, for sales of lots in the town of Cahawba, and also for the rents of public lands and ferries in said town.

CHAPTER XLIX.

Resolution authorizing the Governor to pay to David and Nicholas Chrocheron a Sum of Money therein mentioned.—*Passed December 21, 1820.*

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That the acting governor of this state be authorized and directed to pay David and Nicholas Crocheron, four thousand five hundred dollars, in addition to the sum heretofore allowed them, for the purpose of building a state-house in the town of Cahawba, and that the said additional sum be paid out of any money in the treasury arising from the sale of lots in the town of Cahawba, which is not otherwise appropriated.

Be it further resolved, That the compensation herein allowed, shall be understood, as full and complete payment for all work and labour done on the state house aforesaid, not only that which is provided for in and by the original contract, but likewise all such as may have been directed to be done by the acting governor.

CHAPTER L.

An Act concerning Cahawba Bridge.—*Passed June 16, 1821.*

Preservation of bridge.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That full power and authority is hereby vested in the town council of Cahawba, to take into their charge and possession, the Cahawba bridge, and to pass and establish such by-laws, rules and regulations, as they may deem necessary and proper to preserve the bridge from injuries.

Penalty for injury by design or neglect.

SEC. 2. *And be it further enacted,* That for any injury either wilful or negligent, which may be done to the bridge, the said town council is hereby vested with power and authority, in their corporate capacity, and by their corporate name, to bring suit in any court having competent jurisdiction, and moreover to recover such damages as may be assessed by a jury.

Fine and imprisonment.

SEC. 3. *And be it further enacted,* That if any person shall wilfully or maliciously injure or damage said bridge, such person so offending, on conviction in a court of competent jurisdiction, shall pay such fine as may be assessed by a jury, and may be imprisoned any number of days not exceeding thirty, at the discretion of the judge who may try the same.

Shall be applied.

SEC. 4. *And be it further enacted,* That all fines and damages recovered under this act, either in the state courts, or by the council in a summary way, shall be applied by the council in keeping the bridge up and in repair.

NOTE.—"An Act authorizing the Collection of Toll, at the Cahawba Bridge," will be found under Title 33, "Highways, Bridges, and Ferries."

CHAPTER LI.

An Act for the Relief of Purchasers at the First Sale of Lots in the Town of Cahawba.—*Passed November* 28, 1821.

Purchasers to file relinquishment with secretary of state.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That in all cases where lots in the town of Cahawba have been purchased from the state prior to the first day of January, eighteen hundred and twenty, it shall be lawful for any such purchaser, or other person or persons, being the legal holder of any certificate or certificates of lots, on or before the twentieth day of May, eighteen hundred and twenty-two, to file with the secretary of state a relinquishment in writing of any lot upon which the whole purchase money has not been paid; and all sums paid on the lots relinquished, shall be applied to the payment of any instalments which may be, or shall hereafter become due and payable upon any lots purchased prior to the first day of January, one thousand eight hundred and twenty, as shall not have been relinquished, and shall be so applied and credited as to complete the payment on some one or more lots, where the payments by transfer are sufficient for that purpose: *Provided,* That the right of relinquishment hereby given, shall in no case authorize the party relinquishing to claim any re-payment from the state.

Payments on lots relinquished, how applied.

Interest for lots accruing before 20th May, 1822, remitted.

SEC. 2. *And be it further enacted,* That the interest which shall have accrued before the twentieth day of May, one thousand eight hundred and twenty-two, upon any debt to the state, for any lots purchased prior to the first of January, one thousand eight hundred and twenty, shall be, and the same is hereby remitted and discharged.

Purchasers to pay in four instalments: first instalment, when paid.

SEC. 3. *And be it further enacted,* That all debts due from the purchasers or legal holders of lots in the town of Cahawba, shall be paid in four equal annual instalments, without interest; the first instalment to become due on the first day of December, one thousand eight hundred and twenty-two; and the debtors aforesaid shall be entitled to a discount of twenty-five per cent. on each instalment, if punctually paid: *Provided,* That if any of the instalments aforesaid should not be paid at the time when the same become due and payable, then and in that case, the original terms of sale shall be renewed, and the lot or lots on which such failure of payment shall happen, shall be thereby forfeited; and all sums heretofore paid on said lot or lots, shall accrue to, and inure to the use of the state.

Deductions on prompt payments.

SEC. 4. *And be it further enacted,* That in all cases where complete payment of the sum due or which may become due for any lot or lots, purchased from the state as aforesaid, shall be made on or before the first day of December, one thousand eight hundred and twenty-two, a deduction at the rate of thirty-seven and a half per centum, shall be allowed upon the sum remaining unpaid; and if complete payment shall be made on or before the twentieth day of May, one thousand eight hundred and twenty-two, a deduction at the rate of fifty per cent. shall be allowed upon the sum remaining unpaid: *Provided,* That nothing herein contained shall authorize any discount upon payments made by a transfer of former payments under the provisions of the first section of this act.

Purchasers to allow sub-purchasers the benefit of this act.

SEC. 5. *And be it further enacted,* That if any individual or company, that has laid off into any subdivision, and sold any lots or parts of lots that he or they may have purchased, or been the legal proprietor of, shall fail or refuse to allow to such sub-purchaser all the terms and benefits granted by this act to the original purchaser of said lot or lots, then such original purchaser or proprietor shall be debarred from having or claiming any right or benefit under this act.

Persons relinquishing to file with secretary of state a certain declaration before 20th May, 1822.

SEC. 6. *And be it further enacted,* That no person shall be deemed to be included within, or entitled to the benefit of the provisions of this act, who shall not on or before the twentieth day of May, one thousand eight hundred and twenty-two, sign and file in the office of the secretary of state, a declaration in writing, expressing his consent to the same, and shall pay to the secretary for receiving and recording and filing the same, one dollar.

Persons removing buildings, not benefitted.

SEC. 7. *And be it further enacted,* That no person or persons who shall remove any building or buildings off any lot or lots intended to be forfeited, shall be benefited by any of the provisions of this act.

CHAPTER LII.

An Act to Establish the Town of Courtland, in Lawrence County.—*Passed December* 13, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the town of Courtland, in the county of Lawrence, be, and the same is hereby established, in conformity with the place adopted by the trustees of the Courtland company.

Trustees, treasurer, collector, assessor, and constable to be elected.

SEC. 2. *And be it further enacted,* That there shall be holden in said town of Courtland, an election, on the fourth Friday of December next, and on that day in each and every year, from the hour of ten o'clock in the forenoon until the hour of four o'clock in the afternoon, for the purpose of electing five persons, inhabitants and lot-holders of said town, trustees thereof, a majority of whom shall at all times constitute a quorum to do business, also a town treasurer, assessor, collector, and town constable, to serve for one year; and the said trustees shall meet on the day next succeeding the term of election, and choose from among themselves a president, who shall preside and keep order at all meetings of said trustees; and the president of the trustees is hereby vested with all the powers, privileges, and duties of a justice of the peace, within the corporate limits of said town.

Trustees to choose a president.

Election, by whom to be conducted.

SEC. 3. *And be it further enacted*, That Robert B. Cairy, Thomas Woolridge, Ira Carlton, Benjamin Thomas, and Gideon G. Williams, or a majority of them, are appointed managers of the first election for officers of said town; and the trustees that may be in office at all subsequent elections, shall be the mangers of the same. All officers of said town shall continue to act, until their successors be duly elected and qualified; and all free white male citizens of said town, of the age of twenty-one years and upwards, who may have resided therein three months next preceding any annual election, shall be deemed a qualified elector to vote for officers of said town.

Who may vote.

Trustees, &c. take an oath.

SEC. 4. *And be it further enacted*, That the trustees and other officers elected for the government of said town, shall severally take an oath, faithfully and impartially to discharge the duties of their respective offices, so long as they continue in the same; and the said trustees, and other officers of the town of Courtland, shall proceed in the same manner, possess the same powers, and be subject to the same restrictions, that are pointed out for the government of the trustees and other officers of the town of St. Stephens.

Their powers.

CHAPTER LIII.

An Act to Incorporate the Town of Claiborne.*—*Passed December* 20, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the town of Claiborne, in the county of Monroe, be, and the same is hereby incorporated, and all that tract of land included in the plan of said town, by the general government, be, and the same is hereby declared to be within the limits of the same, in conformity to said plan.

Limits of corporation.

Councillors to be elected.

SEC. 2. *And be it further enacted*, That on the first Monday in January, in each and every year, an election for seven councillors shall be held, at some convenient and public place in said town, who shall serve for the term of one year after they have been elected; which elections shall be conducted by any two of the then acting councillors; and the councillors elected shall, on the day succeeding their election, in each and every year, meet and elect by a majority of votes from their own body, an intendant, whose duty it shall be to preside at all meetings of the councillors, and in his absence or incapacity to attend, any member may be called to the chair. A majority of said board of councillors shall be competent to do business; and the said board is hereby constituted and declared to be a body politic and corporate, by the name of "The Intendant and Council of the Town of Claiborne," and by that name they shall have and enjoy all the rights, powers, and privileges, and be subject to all the liabilities, that are incident to bodies corporate.

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* An Act on this subject, passed in 1819, was repealed in June, 1821.

Style of incorporation.

SEC. 3. *And be it further enacted*, That the said corporation shall have full and complete powers to make by-laws and ordinances, of whatever kind, and upon whatever subjects to them may seem right and proper for the good government of the said town, and to affix such fines and penalties as may be deemed necessary to enforce the same, not contrary to the constitution and laws of this state, and of the United States.

Corporate powers.

SEC. 4. *And be it further enacted*, That the said corporation shall have full and ample power to raise suitable revenue, to carry into effect all the objects of the corporation, by designating and declaring by ordinance, what property shall be subject to taxation, in what sums, and in what manner the same shall be assessed and collected.

Power to impose tax.

SEC. 5. *And be it further enacted*, That the said corporation shall appoint a town marshal, and such other officers as may be deemed necessary.

Town marshal.

SEC. 6. *And be it further enacted*, That the said intendant and each of the said councillors, shall *ex officio* be vested with all the powers and authorities that justices of the peace are by the laws of this state, and shall and may exercise the same within the limits of said town, and the said marshal shall *ex officio* be constable, and be vested with all the powers and authorities, that constables of the county are by the laws of this state, within the limits of said town, and the said intendant and councillors shall be liable to the same penalties and restrictions, as justices of the peace are, and the marshal shall be liable in like manner as are constables.

Intendant and councillors justices of the peace.

Marshal's powers.

SEC. 7. *And be it further enacted*, That if vacancies occur in the said board of councillors, such vacancy shall be filled by the remaining members of the board, and the member or members so added, shall continue in office until the succeeding annual election. And the intendant, councillors, and other officers shall continue in office until their successors are qualified.

Vacancies in council, how filled.

SEC. 8. *And be it further enacted*, That the said intendant, members, councillors, and other officers shall, before they enter upon the duties of their respective offices, take an oath before some person qualified to administer the same, faithfully and correctly to discharge the duties to them committed, according to their best abilities, without favour or partiality.

SEC. 9. *And be it further enacted*, That the said corporation shall have power to appoint patrols within the limits of the said town, whenever it may appear to them to be necessary, and to

Power to appoint patrols.

impose fines and penalties for the non-performance of the duties prescribed for said patrols.

Commissioners to approve securities of officers.

Sec. 10. *And be it further enacted,* That James Simpson, Benjamin Evans, and James Dellett, jr. be appointed commissioners to approve of securities required to be given by the officers appointed under, and by virtue of this act.

CHAPTER LIV.

An Act to Incorporate the Town of Washington in the County of Autauga.—*Passed December* 14, 1820.

Commissioners to be elected.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the freeholders, landholders, and householders, of the town of Washington shall, on the third Monday in January next, and in each and every year thereafter, in said town, hold an election to commence at ten o'clock A. M. and close at five o'clock P. M. and then and there elect by ballot five commissioners, a majority of whom shall constitute a quorum to do business, also a treasurer, assessor, collector, and constable, to serve for the term of one year, and the said commissioners so elected shall, on the next day of each and every such election, meet and elect one person from their own body, as president, whose duty it shall be to preside and keep order, at all meetings of said commissioners; and the said commissioners shall be, and they are hereby constituted a body corporate, by the name and style of "The President and Commissioners of the Town of Washington," and by that name they and their successors in office, shall be capable in law of suing and being sued, pleading and being impleaded, in all manner of suits and actions in law or equity; and also to do all acts incident to bodies corporate.

President to be elected.

May impose taxes.

Sec. 2. *And be it further enacted,* That the said commissioners shall have power and authority to raise such sums of money as they may think necessary, for the well regulation of said town, which sum or sums shall be assessed on the landholders, freeholders, and householders, and also on all billiard-tables and puppet-shows within the said town by the assessor, according to the regulations to be established by the president and said commissioners, and shall be collected by the collector, at such time or times, and be paid and disposed of in such manner, as the commissioners shall direct: *Provided,* The whole amount of such sum or sums shall not in any one year exceed twenty-five cents on every hundred dollars worth of property subject to taxation.

Corporate powers.

Sec. 3. *And be it further enacted,* That the said commissioners shall meet on their own adjournments, and shall have power from time to time, and at all times hereafter, to make such by-laws and regulations, not inconsistent with the constitution and laws of the United States, and of this state, as to them shall appear necessary for the good government of said town; and the same to put in execution, revoke or alter, as to them shall appear expedient, and the said president and commissioners appointed agreeably to the provisions of this act, are hereby empowered to require good and sufficient bond with security from the several officers herein intended to be appointed, and annex such fees to those several offices, as they may deem necessary, and impose such fines and penalties for neglect of duty as may appear to them proper, and to make, limit, and impose all fines and amercements upon those who may offend the by-laws by them made, not exceeding in any case the sum of fifty dollars, and all such fines and amercements, to take, demand, and levy of the goods and chattels of such offender, by warrant issued from under the hand and seal of the president, directed to the town constable, who is hereby authorized and required to execute the same, which fines and amercements shall be paid to the treasurer to be appropriated to the use and benefit of said town.

Election, by whom holden.

SEC. 4. *And be it further enacted,* That the elections intended to be held as mentioned in this act, shall be conducted by a justice of the peace, and two householders in the said town of Washington.

Limits of corporation.

SEC. 5. *And be it further enacted,* That all that part of fraction thirty-three, in township seventeen, and range sixteen, lying west of Autauga creek, and northwest of the Alabama river, be, and the same shall constitute the corporation limits of the town of Washington.

CHAPTER LV.

An Act to Incorporate the lower part of the Town of Tuskaloosa, on the South Fraction of Section 21, of Township 21, in range 10 West of the Meridian of Huntsville.—*Passed December* 20, 1820.

Incorporation.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the lower part of the town of Tuskaloosa, on the south fraction of section number twenty-one, of township number twenty-one, range number ten, west of the meridian of Huntsville, and the citizens thereof be, and they are hereby incorporated.

Powers.

SEC. 2. *And be it further enacted,* That the aforesaid lower part of the town of Tuskaloosa, shall be subject to the same restrictions and regulations, and endowed with the same powers and privileges, that the town of Montgomery is subject or entitled to, by an act passed at Huntsville, December third, eighteen hundred and nineteen, entitled "An Act to incorporate the Town of Montgomery, in the County of Montgomery," except that until the first Monday in January, one thousand eight hundred and twenty-two, and until their successors be appointed in conformity with said act, Charles Lewin, Benjamin Cox, Gilbert Saltonstall, John J. Inge, Isaac Patrick, William M. Marr, and Joshua Holbert, be, and they are hereby constituted a body corporate, by the name and style of "The Intendant and Council of the lower part of the Town of Tuskaloosa," under which title they, and their successors in office, may sue and be sued, plead and be impleaded, as is prescribed in the before recited act.

CHAPTER LVI.

An Act to Incorporate the Town of Selma, in the County of Dallas.—*Passed December* 4, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all that tract of land included within fraction thirty-six, in township seventeen, range ten, and fraction thirty-one, in township seventeen, range eleven, west of Alabama river, including the river adjoining said fraction, to the middle of the same in the county of Dallas, shall be called and known by the name of the town of Selma.

Election of councillors.

SEC. 2. *And be it further enacted*, That on the first Monday in April next, and annually thereafter, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, an election by ballot shall be held for five councillors, at some convenient public place in said town. And that all free white male persons of the age of twenty-one years and upwards, who shall be landholders or householders within the same, or shall have resided therein three months next preceding such election, shall be entitled to vote for said councillors, and when the election shall be closed, the managers thereof shall proclaim the result, and give notice to the persons elected, who shall, on the following day, at the hour of eleven o'clock in the forenoon, meet at the place where said election was held, and there proceed to elect by ballot from their own body, an intendant, whose duty it shall be to preside and preserve order at all meetings of the council, and the persons so elected shall continue in office until their successors are duly qualified.

Persons qualified to vote.

Intendant, how to be elected.

Superintendents elected.

SEC. 3. *And be it further enacted*, That the first election shall be held and conducted by Gilbert Shearer, William Johnston, Benjamin L. Saunders, Nathaniel G. Brown, and William Read, or any three of them, who shall give ten days previous notice of the time and place of holding said election, by advertising in three or more public places in said town. And all future elections shall be managed by such persons, not exceeding three in number, as the intendant and council shall annually appoint, who shall give the like notice of the time and place of holding the same. And the intendant and council respectively, shall, before entering on the duties of his or their office, take the following oath before some justice of the peace of Dallas county, to wit: "I, ——— ———, do solemnly swear, that I will equally and impartially perform all the duties required of me by the act incorporating the town of Selma: So help me God."

Oath of intendant, &c.

Incorporated.

SEC. 4. *And be it further enacted*, That the intendant and council are hereby declared to be a body corporate, by the name of the town council of Selma, and by that name, they and their successors shall be capable of suing and being sued, pleading and being impleaded, in all manner of suits, either in law or equity, to have a common seal, and the same to alter at pleasure, and may purchase, have, hold, possess, receive, enjoy, and retain in perpetuity, or for any term of years, any estate, real or personal, not exceeding in value ten thousand dollars, and may sell or lease the same.

Seal.

Own property.

SEC. 5. *And be it further enacted*, That if the intendant die, resign, be removed from office, or absent, the council shall fill such vacancy, by an appointment pro tempore or otherwise, and vacancies in the council shall be filled by the intendant and remaining councillors, a majority of whom shall be a quorum to transact business.

Vacancies in council, how filled.

SEC. 6. *And be it further enacted*, That the council shall have power to pass all such orders, by-laws, and ordinances respecting the streets, markets, buildings, pleasure carriages, wagons, carts, drays, and police of said town, that shall be necessary for the security and welfare of the inhabitants thereof; and for preserving health, peace, order, and good government within the same, and to assess a tax on the inhabitants thereof, not exceeding one-third part of the amount of the state tax which is paid for property of the same kind, they shall have power to prevent and remove nuisances, to appoint patrols, and define their duties, to affix fines for offences against their by-laws and ordinances, not exceeding fifty dollars for every offence, to be recovered before the intendant, or any member of the council, for the use and benefit of the town, to assess a tax on licenses to retailers of spirituous and other liquors, and billiard-tables kept for use in said town, not exceeding on the former the sum of ten dollars, and on the latter the sum of fifty dollars, in any one year; they shall have power to appoint a clerk and treasurer, an assessor and collector of taxes, and constable for said town, to affix the salaries and fees of such officers respectively, and define their duties; to confine any person or persons for a time not exceeding two hours, who shall incur any penalty or forfeiture inflicted by any of the ordinances of said corporation, passed conformably to the powers vested in them by this act.

Powers of the council.

SEC. 7. *And be it further enacted*, That the intendant, and each and every of the council, shall be vested with all the powers and authorities that justices of the peace are vested with, by the laws of this state, and shall and may exercise the same within the limits of said town, but in matters of debt, only where the town council shall be a party; subject nevertheless to an appeal to the circuit court of the county in which such town shall be, as in cases of appeals from the decisions of justices of the peace.

Councillors can act as justices of the peace.

SEC. 8. *And be it further enacted*, That the intendant and council shall have no power to assess a tax on lands which shall not have been laid off and sold, or any property of the United States, or this state, or property belonging to any seminary of learning, church, or religious society, they shall have no power to tax the improvements on any lot for the term of three years,

Power to tax land.

or to make any by-laws, or ordinances repugnant to the laws of this state, and this act and all the by-laws and ordinances shall be subject to revision, or repeal by the general assembly.

SEC. 9. *And be it further enacted*, That if the intendant or any member of the council shall be guilty of any wilful neglect of duty or malpractice in office, he shall forfeit and pay a sum not exceeding two hundred dollars for every such wilful neglect or malpractice, to be recovered by any person suing for the same, in any court having cognizance thereof, and paid into the treasury of the county in which said town shall be.

Failure of elections is provided for.

SEC. 10. *And be it further enacted*, That if an election shall not be held according to this act, the intendant and council for the time being, shall order an election to be held within twenty days thereafter, and the councillors thus elected shall continue in office until the next annual election.

CHAPTER LVII.

An Act* to Incorporate the Town of Erie, in the County of Greene.—*Passed December* 18, 1820.

Corporation limits.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all that tract of country situate on the east bank of the Tuskaloosa river, in range three east, and township twenty, including all of the town known by the name of Erie, agreeably to the plan of the same, as adopted by the proprietors thereof, is hereby incorporated, and shall be called and known by the name of "Erie."

Council.

Corporate powers.

SEC. 2. *And be it further enacted*, That James A. Torbert, Thomas H. Herndon, Francis T. Gaines, Durrett White, Anthony D. Kinnard, Howell L. Kennon, and Hiram Shortridge, be, and the same are hereby constituted a body corporate, by the name and style of "The Intendant and Council of the Town of Erie," who shall hold their office until the first Monday in January, one thousand eight hundred and twenty-two; and the said corporation is hereby endowed with the same power and privileges, and shall be subject to the same restrictions and regulations, and in all their proceedings shall be governed in the same manner as is provided for in an act, entitled "An Act to Incorporate the Town of Montgomery, in the County of Montgomery," passed at Huntsville, the third day of December, Anno Domini eighteen hundred and nineteen.

CHAPTER LVIII.

An Act to Incorporate the Town of Elyton, in the County of Jefferson.—*Passed December* 20, 1820.

Corporation limits.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the town of Elyton, in the county of Jefferson, be, and the same is hereby established and incorporated, including the northeast quarter of section three, township eighteen, and range three west of the basis meridian.

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* See 68th Chapter of this Title.

Election of councillors.

SEC. 2. *And be it further enacted,* That an election shall be held at the court-house, in the town of Elyton, on the first Monday in May in each and every year, to commence at ten o'clock in the morning, and close at two in the afternoon, for the purpose of electing by ballot seven councillors, inhabitants of said town, who shall serve for the term of one year after they shall have been elected; the first election shall be conducted and managed by Matthew H. Gillaspie, Samuel Hall, William C. Tarrent, and Col. John Martin; and all subsequent elections shall be conducted by two of the councillors, to be appointed by the board for that purpose; and the said councillors so elected shall, on the next day after such election in each and every year, meet and elect by a majority of votes from their own body, an intendant, whose duty it shall be to preside and keep order at all meetings of the said councillors, and in his absence or incapacity, any other member may be called to the chair. And the said councillors shall be, and they are hereby constituted a body corporate, by the name and style of "The Intendant and Council of the Town of Elyton," and by that name they and their successors in office shall be capable in law of suing and being sued, of pleading and being impleaded, in all manner of suits, either in law or equity; also to have and keep a common seal, and the same to break, alter, and amend at pleasure, and in general to do all acts which are incident to bodies corporate; and to purchase, hold, and dispose of, for the benefit of said town, real, personal, or mixed property, to the amount of ten thousand dollars.

Superintendents.

Corporate powers.

SEC. 3. *And be it further enacted,* That the said intendant and council shall possess the same powers, and be subject to the same restrictions, as are provided by law for the government of the "Intendant and Council of the Town of Montgomery," passed at Huntsville, third of December, eighteen hundred and nineteen.

CHAPTER LIX.

An Act to Incorporate the Town of Ococoposo, in the County of Franklin.—*Passed December 20, 1820.*

Corporation limits.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the town of Ococoposo, in the county of Franklin, be incorporated in conformity with the general plan of the aforesaid town.

Election of trustees.

SEC. 2. *And be it further enacted,* That there shall be holden in said town of Ococoposo an election, on the first Monday in March next, and on that day in each and every year, from the hour of ten o'clock in the forenoon until the hour of two in the afternoon, for the purpose of electing five persons, inhabitants of said town, to act as trustees thereof, a majority of whom shall constitute a quorum to do business; also a town constable, Officers to be appointed. assessor, collector, and treasurer, to serve for one year: *Provided*, that this act, and any of the by-laws, may at any time be repealed by the general assembly.

Qualified voters. SEC. 3. *And be it further enacted*, That every free white male of the age of twenty-one years, who has resided in the town of Ococoposo three months previous to the election, shall be entitled to vote for said trustees and other officers.

Corporate powers. SEC. 4. *And be it further enacted*, That the said trustees, and other officers so elected, shall proceed in the same manner, possess the same powers, and be subject to the same restrictions as are provided by law for the government of the trustees and other officers of the town of Russelville, in the county of Franklin.

Patrols may make excuse. SEC. 5. *And be it further enacted*, That from and after the passage of this act, any defaulting patrol shall have the power to make his excuse for the non-performance of his duty as patrol, before the tribunal to which he is returned, and if the excuse made by any defaulter be deemed good and sufficient, such defaulter shall not be compelled to pay any costs which may accrue. And all acts and parts of acts contravening the provisions of this act, be, and the same are hereby repealed.

CHAPTER LX.

An Act to change the Name of Ococoposo, and for other purposes.—*Passed June* 14, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, Election of trustees. That the name of the town of Ococoposo, in the county of Franklin, be altered to that of Big Spring, and that elections for trustees, town constable, assessor, collector, and treasurer, be held hereafter on the first Monday in August next, and on that day in each and every year thereafter.

Repealing clause. SEC. 2. *And be it further enacted*, That so much of an act passed on the twentieth day of December, eighteen hundred and twenty, as militates against this act, be, and the same is hereby repealed.

CHAPTER LXI.

An Act to Incorporate the Town of Hazle Green, in the County of Madison.—*Passed June* 15, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That Limits of corporation. the town of Hazle Green, in the county of Madison, be, and the same is hereby established and incorporated, within the following boundaries, to wit: beginning at a marked line on the meridian road, near Robert Irwin's store, and running north one half mile, so as to include all the space contained in one-fourth of a mile east and west of said road.

Election of commissioners. SEC. 2. *And be it further enacted*, That there shall be holden in the said town of Hazle Green, an election, on the first Saturday in August next, and on that day in each and every succeeding year, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, for the purpose of electing five persons, inhabitants of said town, to act as trustees thereof, a majority of whom shall constitute a quorum to do business: and the said trustees shall elect from their body a president, who shall preside at their meetings: they shall also appoint a treasurer and constable, who shall serve for one year.

Sec. 3. *And be it further enacted,* That trustees when elected are hereby empowered to superintend the police of said town, by passing such by-laws, not contrary to the laws of the United States or of this state, as they may think proper for the government of said town, and for the suppression and removal of nuisances, laying off and repairing the streets and highways, also to assess such taxes on all property lying within the limits of said town, as they may think proper, for all the purposes of a proper police, said assessment of taxes not to exceed one half the amount of the state tax paid on such property; which taxes shall be collected by the town constable, in the same way, and in such manner as the state taxes are collected by the sheriff.

Sec. 4. *And be it further enacted,* That every free white male, of the age of twenty-one years, who has resided in the limits of said town three months previous to the election of the trustees, shall be entitled to vote for trustees.

CHAPTER LXII.

An Act to Incorporate the Town of Demopolis, in Marengo County.—*Passed December* 15, 1821.

Incorporated.

Corporate limits.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the town of Demopolis, in the county of Marengo, be, and the same is hereby incorporated, and that all that tract of land, included in the plan of said town, be, and the same is hereby declared to be within the limits of the same, in conformity to said plan.

Election to be held for commissioners.

Term of service.

Election, by whom held.

Councillors elect intendant.

Corporate powers.

Sec. 2. *And be it further enacted,* That on the first Monday in April in each and every year, an election shall be held at the most public and convenient place in said town for seven councillors, who shall serve for the term of one year, which election shall be conducted by any two of the then acting councillors, and the said councillors shall, on the day succeeding their election, in each and every year, meet and designate by a majority of votes from their own body, an intendant, whose duty it shall be to preside at all meetings of the councillors, and in his absence or incapacity to attend, any member may be called to the chair: and a majority of said board of councillors shall constitute a quorum to do business. And the said board is hereby constituted and declared to be a body politic and corporate, by the name of "The Intendant and Council of the Town of Demopolis," and by that name shall have and enjoy all the rights.

powers, and privileges, and be subject to all the liabilities that are incident to bodies corporate.

Corporation may enact by-laws.

SEC. 3. *And be it further enacted,* That the said corporation shall have full and complete power to make such by-laws and ordinances as they may think proper, for the good government of said town, and to affix such fines and penalties as may be deemed necessary to enforce the same: *Provided,* said laws and ordinances be not repugnant to the constitution and laws of this state, and of the United States.

Corporation to levy tax.

What articles.

Tax not to exceed half county tax.

SEC. 4. *And be it further enacted,* That the corporation shall be authorized to raise a revenue to carry into effect all the objects of the corporation, by laying a tax on all town-lots, houses, pleasure-carriages, sales at auction, and on all species of merchandise, vended or sold by the merchants of said town: *Provided,* That said tax shall not exceed one half of the county tax.

Appoint constable, &c.

SEC. 5. *And be it further enacted,* That the said corporation shall appoint a constable, and such other officers as they may deem expedient.

Intendant *ex officio* justice of the peace.

Powers of constables.

SEC. 6. *And be it further enacted,* That the said intendant shall, *ex officio,* be vested with all the powers and authorities that justices of the peace are, by the laws of this state, and shall and may exercise the same, within the limits of the said town of Demopolis. And the said constable shall be vested with all the powers and authorities that constables of the county are by the laws of this state, and may exercise the same within the limits of said corporation. And the said intendant and constable shall be liable to the same restrictions and penalties, as justices of the peace and constables of the county are.

Vacancies in a board, how filled.

SEC. 7. *And be it further enacted,* That should any vacancies occur in the said board, such vacancies shall be filled by the remaining members of the board; and the member or members so added, shall continue in office until the succeeding election. And the intendant, councillors, and other officers, shall continue in office until their successors are qualified.

Intendant and councillors to take oath.

SEC. 8. *And be it further enacted,* That the said intendant, councillors, and other officers, shall before they enter on the duties of their respective offices, take an oath before some justice of the peace, faithfully and correctly to discharge the several duties imposed by this act, without favour or partiality.

Constable enter into bond.

SEC 9. *And be it further enacted,* That the said constable shall not only take the oath required by this act, but shall, before he enters on the duties of his office, enter into bond with good and sufficient securities, to be approved by the intendant of the said corporation.

Commissioners to hold election.

Time of election.

SEC. 10. *And be it further enacted,* That Allen Glover, Nathan Bolles, and John Dickson be, and they are hereby appointed commissioners, to hold the first election for said councillors; which election shall take place on the second Monday in January, eighteen hundred and twenty-two, at the place designated by this act.

Electors.

SEC. 11. *And be it further enacted,* That the election for the said councillors of the town of Demopolis, shall commence at the hour of twelve o'clock, and be kept open until the hour of four in the afternoon, and that all freeholders, and householders, twenty-one years of age, and residing within the limits of said corporation, be competent to vote for said councillors.

CHAPTER LXIII.

An Act to Incorporate the Town of Belle-Fonte, in the County of Jackson.—*Passed December* 15, 1821.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the town of Belle-Fonte, in the county of Jackson, be, and the same is hereby established and incorporated, including sixty acres, agreeably to the plan of said town. Extent.

Sec. 2. *And be it further enacted,* That an election shall be held at the house of John Hampton in said town, on the first Monday in February next, and on the same day in every year thereafter, to commence at ten o'clock in the morning, and close at two in the afternoon, for the purposes of electing by ballot five councillors, inhabitants of said town, who shall serve for the term of one year after they shall have been elected; the election shall be conducted and managed by a justice of the peace, and two householders in said town; and all subsequent elections shall be conducted by two of the councillors, to be appointed by the board for that purpose. And the said councillors, so elected, shall on the next day after such election, in each and every year, meet and elect by a majority of votes, from their own body, an intendant, whose duty it shall be to preside and keep order at all meetings of the said councillors; and in his absence or incapacity, any other member may be called to the chair. And the said councillors shall be, and they are hereby constituted a body corporate, by the name and style of "The Intendant and Council of the Town of Belle-Fonte," and by that name they and their successors in office, shall be capable in law, of suing and being sued, of pleading and being impleaded, in all manner of suits, either in law or in equity; also to have and keep a common seal, and the same to break, alter, and amend at pleasure, and in general to do all acts which are incident to bodies corporate, and to purchase, hold, and dispose of, for the benefit of said town, real, personal, or mixed property, to the amount of ten thousand dollars. Election to be holden for councillors. Term of service. Constituted body corporate. Style. Powers.

Sec. 3. *And be it further enacted,* That the said intendant and council shall possess the same powers, and be subject to the same restrictions, as are provided by law for the government of the intendant and council of the town of Montgomery, passed at Huntsville, the third of December, eighteen hundred and nineteen.

CHAPTER LXIV.

An Act to Incorporate the town of Vernon, in the County of Autauga.—*Passed December 8, 1821.*

Town officers to be elected.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the freeholders, landholders, and householders of the town of Vernon, shall, on the first Monday in January next, and each and every year thereafter, hold an election in said town, to commence at eleven o'clock, A. M. and to close at three o'clock, P. M. and then and there elect by ballot five commissioners, a majority of whom shall constitute a quorum to do business; also a treasurer, assessor, collector, and constable, to serve for the term of one year; and the said commissioners so elected shall, on the day succeeding said election, meet and elect one person from their own body, as president, whose duty it shall be to preside and keep order at all meetings of said commissioners; and the said commissioners shall be, and they are hereby constituted a body corporate, by the name and style of "The President and Commissioners of the Town of Vernon," and by that name they and their successors in office shall be capable in law of suing and being sued, pleading and being impleaded, in all manner of suits and actions in law or equity; and also in all acts incident to bodies corporate.

Commissioners to elect president.

Incorporated.

Commissioners may assess taxes.

SEC. 2. *And be it further enacted,* That the said commissioners shall have power and authority to raise such sums of money as they may think necessary for the well regulation of said town, which sum or sums shall be assessed on the landholders, freeholders, and householders; and also on all billiard-tables, puppet-shows, hawkers, and pedlers within said town, by the assessors according to the regulations to be established by said commissioners, and shall be collected by the collector at such time or times, and be paid and disposed of in such manner, as the commissioners shall direct: *Provided,* the whole amount of such sum or sums shall not in any one year amount to more than twenty-five per centum on the amount of the state tax for said year.

May make by-laws.

SEC. 3. *And be it further enacted,* That the said commissioners shall meet on their own adjournments, and shall have power from time to time, and at all times thereafter, to make such by-laws and regulations, not inconsistent with the constitution and laws of the United States, or of this state, as to them shall appear necessary for the good government of said town, and the same to put in execution, revoke, or alter, as to them shall appear expedient; and the said president and commissioners, appointed agreeably to the provisions of this act, are hereby empowered and required to cause good and sufficient bond and security to be taken from the several officers herein intended to be appointed, and to annex such fees to those several offices, as they may deem necessary, and to impose such fines and penalties for neglect of duty, as to them may appear fit and proper, and to make, limit, and impose all fines and amercements upon those who may violate the by-laws by them made, not exceeding in any case the sum of fifty dollars, and all such fines and amercements to make, demand, and levy of the goods and chattels of such offender or offenders, by warrant issued from under the hand and seal of the president, directed to the town constable, who is hereby authorized and required to execute the same, which fines and amercements shall be paid to the treasurer, to be appropriated to the use and benefit of said town.

Election, by whom conducted.

SEC. 4. *And be it further enacted*, That the elections authorized by this act, shall be conducted by a justice of the peace, and two householders, residents of said town of Vernon.

Limits.

SEC. 5. *And be it further enacted*, That all that part of fractions thirty-five and thirty-six, west of Alabama river, in township seventeen, and range fourteen, be, and the same shall constitute the corporate limits of the town of Vernon.

CHAPTER LXV.

An Act to Incorporate the Town of Sparta, and for other purposes.—*Passed December* 3, 1821.

Incorporated.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That from and after the passage of this act, the permanent seat of justice of Conecuh county, situate and being on the southwest quarter of section thirty-one, of township five, in range eleven, within the county aforesaid, be, and is hereby incorporated; and that the same be hereafter known by the name of the town of *Sparta*.

Commissioners to be elected.

SEC. 2. *And be it further enacted*, That there shall be an election by ballot, held at the court-house in said town, on the first Monday of March next, and on the first Monday of March in each and every year thereafter, to commence at the hour of twelve o'clock, and be kept open until the hour of three in the afternoon, for the purpose of electing five persons to act as commissioners of said town, a majority of whom shall constitute a quorum to do business, and the said commissioners shall, when elected, choose from their own body an intendant, to preside and keep order at their meetings, and in his absence or incapacity, any other member may be called to the chair: and said commissioners are hereby constituted a body corporate, by the name and style of "The Intendant and Commissioners of the town of Sparta," &c. and by that name they and their successors in office shall be capable in law of suing and being sued, of pleading and being impleaded, in all manner of suits, either in law or equity, and in general of doing all acts which are incident to bodies corporate.

To choose intendant.

Powers.

Elections.

SEC. 3. *And be it further enacted*, That every white male person of the age of twenty-one years and upwards, who may have resided within the limits of the corporation, which are hereby declared to comprehend the quarter section aforesaid, for the space of two months next preceding an election for commissioners, or who may be, at the time of the election, proprietors of lots, or householders within said corporation, shall be entitled to vote at said elections, which shall be superintended by a justice of the peace of the captain's district, including said town, or in his absence, by said captain.

May pass by-laws, &c.

SEC. 4. *And be it further enacted,* That the said corporation shall have power to pass all by-laws, regulations, and ordinances necessary to preserve the health of said town, to prevent and remove nuisances, to clear and keep in repair the streets and alleys, to have general control and superintendence over the springs and wells of said town, and in general to pass such by-laws and regulations not repugnant to the constitution of this state, or the laws thereof, as the said corporation shall, from time to time, deem expedient; and the said corporation shall also have power to appoint and remove at pleasure, a clerk, assessor, collector, treasurer, constable, and overseer, or either of them, or any other officers they may require, and annex such fees to the several offices, and to impose such fines for neglect of duty in office, not exceeding twenty dollars, as they shall deem necessary, and impose such fine or fines, not exceeding five dollars, for a breach of their by-laws, as they may deem proper; to be sued for in the name of the corporation, by warrant directed to said constable by the intendant aforesaid, who shall be *ex officio* a justice of the peace within the corporation, restricted and governed as such by the by-laws, regulations, and ordinances of the corporation exclusively.

Commissioners to appoint town officers.

To levy and assess taxes.

SEC. 5. *And be it further enacted,* That the said commissioners shall have power and authority, annually to levy and assess a tax on the inhabitants within the limits of the corporation, not exceeding the state tax: and all persons who shall have resided within the limits of the said corporation two months, immediately preceding the time the tax shall be laid, shall be subject to taxation, according to such regulations as the commissioners may direct: *Provided,* all property not taxable by the state, be exempt from the taxation prescribed by this act.

Who subject to taxation.

Board to fill vacancies in its own body.

SEC. 6. *And be it further enacted,* That when vacancies shall happen in the board of commissioners, by death, resignation, or otherwise, such vacancy shall be filled by the board, and the member or members so added, shall continue in office until the next succeeding annual election.

To take oath.

SEC. 7. *And be it further enacted,* That the commissioners aforesaid, and their successors in office shall, before they enter on the duties thereof, take an oath before some person qualified to administer the same, that they will faithfully discharge the duties to them committed, as commissioners of the town of Sparta, without favour, affection, or partiality.

Who liable to work on streets.

SEC. 2. *And be it further enacted,* That all male persons above the age of sixteen, and under the age of forty-five years, who shall have resided ten days within said corporation, shall, during their residence therein, be liable to work on the streets, alleys, public squares, wells, springs, pavements, and roads, within the limits of said corporation, in such way as may be prescribed by the said commissioners; and they are hereby discharged from working on any road or roads of the county without the limits thereof; any law to the contrary notwithstanding: *Provided nevertheless*, that no overseer appointed by said commissioners to superintend the public roads within said corporation, nor hands assigned him, shall be exempt from the penalties annexed by law to the overseers of public roads within this state, and to the hands liable to work thereon, in consequence of a violation of their respective duties, as prescribed by the road law of this state.

Inhabitants not to work on roads.

SEC. 9. *And be it further enacted*, That if the first election for commissioners, as prescribed by this act, be not held on the first Monday of March next, it shall be lawful for the same to be conducted as contemplated in the second section of this act, at any time within one month thereafter: *Provided*, the inhabitants of said town receive ten days notice of the time of holding said election, by advertisement or otherwise.

Election not held as prescribed in second section, may be holden thereafter.

SEC. 10. *And be it further enacted*, That the judge of the county court, in co-operation with the commissioners of roads and revenue, shall be, and they are hereby vested with the exclusive power of disposing of the vacant land within the limits of said corporation, as they may deem most expedient, for the benefit of the county of Conecuh; and it shall be their duty from time to time, as occasion may require, and they are hereby empowered to grant a title in fee simple, for any lot or lots of land, within said corporation, to any person or persons, who shall have paid the instalments which shall accrue on the lot or lots, by said person or persons purchased, or shall have paid the full price, which shall have become due on the lot or lots to which such person or persons shall be entitled, which grant shall invest the granted with an exclusive title to hold the lot or lots therein, purporting to be granted to him or her, and his or her heirs for ever.

Vacant land in corporation, by whom disposed of.

SEC. 11. *And be it further enacted*, That the thirty-eighth section of an act of the general assembly, passed at Huntsville, December thirteenth, eighteen hundred and nineteen, appointing certain commissioners therein named to fix on a site for the public buildings of the county of Conecuh, and for other purposes therein mentioned, be, and the same is hereby repealed; and it shall be the duty of said commissioners, appointed by said act, to transfer to the judge of the county court, and the commissioners of roads and revenue of Conecuh county, all the papers, documents, records, and money which may be in their possession as commissioners aforesaid, and render to them a true and faithful report of all the receipts and disbursements which shall have been incident to their commission, and the same shall operate as a final discharge of their responsibility.

Repeal.

CHAPTER LXVI.

An Act amendatory of an Act to Incorporate the Town of Sparta, and for other purposes, passed December third, A. D. 1821.—*Passed December* 15, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the passage of this act, so much of the above recited act as mentions and refers to the southwest quarter of section thirty-one, of township five, in range eleven, within the county of Conecuh, be, and the same is hereby taken and made to apply and refer to the southeast, instead of the southwest quarter of the township and range aforesaid, any law to the contrary notwithstanding.

CHAPTER LXVII.

An Act to authorize the Judge of the County Court and Commissioners of Roads and Revenue of Butler County, to levy a County Tax, and for other purposes therein mentioned.—*Passed December* 28, 1822.

Commissioners to levy tax.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the judge of the county court and the commissioners of roads and revenue of the county of Butler, be, and they are hereby authorized to levy a tax on all persons and property in said county, subject to taxation, not exceeding one-third of the state tax, which shall be collected by the tax collector in the same manner and for the same compensation that the state tax is collected, and paid into the county treasury; and shall be appropriated by the said judge and commissioners for county purposes.

SEC. 2. *And be it further enacted,* That from and after the passage of this act, the town of Buttsville, in the county of Butler, shall be called and known by the name of Greenville.

SEC. 3. *And be it further enacted,* That all rights, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if the name of Buttsville had not been changed.

Commissioners of the town formerly known by the name of Buttsville, to settle with the judge of the county court.

SEC. 4. *And be it further enacted,* That it shall be the duty of the commissioners appointed by law, to fix upon a seat of justice for the county of Butler, on or before the first Monday in May next, and annually thereafter to make a fair and correct statement, in writing, to the judge of the county court and the commissioners of roads and revenue of said county, of all the town lots which shall have been sold for the use of said county, in the town heretofore known by the name of Buttsville, and of all the moneys which may have been collected, and the several sums due them as commissioners aforesaid, and of such other things in relation to their proceedings as they may deem necessary; or as the said judge and commissioners may require. And it shall be the duty of the judge and commissioners aforesaid, to make a record of the same in a book to be kept by their clerk for that purpose; and to allow to the said commissioners all expenditures which shall have been incurred by them, in managing the business of said town. And it shall moreover be the duty of the commissioners aforesaid, when they shall have completed the public buildings, which they are authorized by law to erect, and paid the expenses of the same, without delay to account to the judge and commissioners aforesaid; and after deducting all disbursements and their own compensation, pay over the balance of public money, if any in their hands arising from the sales of lots in said town, into the county treasury of said county, to be appropriated by the judge and commissioners aforesaid to county purposes.

SEC. 5. *And be it further enacted*, That all laws contravening the provisions of this act, be, and they are hereby repealed.

CHAPTER LXVIII.

An Act to Repeal in part an Act, entitled "An Act supplementary to an Act, entitled 'An Act to Incorporate the City of Mobile,'" passed the 17th December, 1819.—*Passed December* 5, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the fifth section of "An Act to Incorporate the City of Mobile," passed the fourteenth day of December, eighteen hundred and twenty, be, and the same is hereby repealed.

Fifth section of 1820 repealed.

CHAPTER LXIX.

An Act to amend "An Act Incorporating the Town of Erie."—*Passed December* 14, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the first section of an Act, passed the eighteenth day of December, eighteen hundred and twenty, entitled "An Act to Incorporate the Town of Erie," be, and the same is hereby repealed.

Repeal.

SEC. 2. *And be it further enacted*, That the corporate powers given by the second section of the above recited act, shall extend only to three hundred and twenty half acre lots, and the ten acre lot including and near the landing of said town, as originally laid off by the proprietor thereof, and shall be called and known by the name of "Erie."

Limits of corporation.

CHAPTER LXX.

An Act to Repeal "An Act Incorporating the Town of Jackson, in Clarke County."—*Passed December* 31, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the "Act Incorporating the Town of Jackson, in the County of Clarke," passed on the twenty-seventh day of November, one thousand eight hundred and sixteen, be, and the same is hereby repealed.

CHAPTER LXXI.

An Act to Incorporate the Town of Ashville, in the County of St. Clair.—*Passed December* 12, 1822.

Town incorporated.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the town of Ashville, in the county of St. Clair, be, and the same is hereby established and incorporated, including thirty acres, agreeably to the plan of said town.

Election for councillors, when held.

Sec. 2. *And be it further enacted,* That an election shall be held at the house of John Cunningham, in said town, on the first Monday in February next, and on the same day in every year thereafter, to commence at ten o'clock in the morning, and close at two in the afternoon, for the purpose of electing by ballot five councillors, inhabitants of said town, who shall serve for the term of one year after they shall have been elected; the election shall be conducted and managed by a justice of the peace, and two householders in said town, and all subsequent elections shall be conducted by two of the councillors, to be appointed by the board for that purpose; and the said councillors so elected shall, on the next day after said election in each and every year, meet and elect by a majority of votes from their own body, an intendant, whose duty it shall be to preside and keep order at all meetings of said councillors, and in his absence, or incapacity, any other member may be called to the chair; and the said councillors shall be, and they are hereby constituted a body corporate, by the name and style of "The Intendant and Council of the Town of Ashville," and by that name they and their successors in office, shall be capable in law of suing and being sued, of pleading and being impleaded, in all manner of suits, either in law or equity; also, to have and keep a common seal, and the same to break, alter, and amend at pleasure, and in general to do all acts which are incident to bodies corporate, and to purchase, hold, and dispose of, for the benefit of said town, real, personal, or mixed property, to the amount of ten thousand dollars.

By whom conducted.

Intendant to be elected.

Councillors declared body corporate.

Corporate powers.

Continued.

Sec. 3. *And be it further enacted,* That the said intendant and council shall possess the same powers, and be subject to the same restrictions, as are provided by law for the government of the intendant and council of the town of Montgomery, passed at Huntsville, the third day of December, eighteen hundred and nineteen.

CHAPTER LXXII.

An Act to Incorporate the Town of Jonesborough, in the County of Jefferson.—*Passed December* 31, 1822.

Town incorporated.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the town of Jonesborough, in Jefferson County, be, and the same is hereby established and incorporated.

SEC. 2. *And be it further enacted*, That hereafter the householders within the town of Jonesborough, on the first Monday in March next, and on that day in each and every succeeding year, shall hold an election, to commence at ten o'clock in the morning, and close at three in the evening, for the purpose of electing by ballot five persons, inhabitants of said town, to act as trustees thereof, a majority of whom shall constitute a quorum to do business, also a town constable, assessor, collector, and treasurer, to serve for one year. Trustees, when elected.

SEC. 3. *And be it further enacted*, That every free white male of the age of twenty-one years and upwards, and who was a resident of said town on the first day of February preceding the day of election for trustees, shall be entitled to vote for said trustees. Electors.

SEC. 4. *And be it further enacted*, That the said trustees and the officers so elected, shall proceed in the same manner, possess the same powers, and be subject to the same regulations as are provided by law for the government of the trustees and other officers of the town of Elyton. Powers, &c. of trustees, same as those of Elyton.

CHAPTER LXXIII.

An Act concerning the Council of the Town of Belle-Fonte.—*Passed January* 1, 1823.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the election which was held on the second Monday of February, eighteen hundred and twenty-two, for the purpose of appointing the council of the town of Belle-Fonte, in the county of Jackson, be, and the same is hereby declared legal. Election held in 1822 declared legal.

CHAPTER LXXIV.

An Act to Incorporate the Huntsville Fire Engine Company.—*Passed December* 10, 1822.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the following persons, members of the Huntsville Fire Engine Company, to wit: Preston Yeatman, James H. Turner, Jos. Estell, Theodorick L. Smith, George H. Malone, John J. Coleman, Henry A. Hunnewell, William Cottinger, Francis Callender, John Kennedy, David I. Hynds, John F. Mills, Luke Howard, John Hunter, John B. Eldridge, Robert Caruthers, William Stewart, Joseph Vokes, Ferdinand Sannoner, Charles M'Clellan, Andrew D. Veitch, William Cruse, John Estell, Edmund Irby, Jesse Searcy, Wilson T. Caruthers, Leighton Wood, Abraham S. Thew, Henry Adams, William Veitch, Thomas B. Jones, William S. Henderson, John Wood, Thomas S. Pryor, Richard B. Brickell, L. W. Wilson, D. St. Clair M'Intosh, Samuel K. M'Graw, James St. Clair, James M. Tilford, Hugh M. Warren, James H. Weakly, Richard B. Members of the company.

Purdom, William Feeny, George W. Lee, Henry M. Blount, George R. Wharton, William W. Harris, and Alexander S. Morgan, and such other persons as shall hereafter become members of the said company, shall be, and are hereby constituted a body corporate by the name of the Huntsville Fire Engine Company; and by that name they and their successors shall be persons in law, capable of suing and being sued, pleading and being impleaded, answering and being answered, defending and being defended in all civil actions whatever, either in law or equity.

Incorporated.

Corporate powers.

SEC. 2. *And be it further enacted*, That they and their successors may have a common seal, change and alter the same at their pleasure, purchase, take, hold, and enjoy, to them and their successors, any real estate in fee-simple, or otherwise, and any goods, chattels, or personal estate, for the purpose of enabling them the better to carry into execution such measures as may tend to promote the interest of said institution: *Provided*, that the yearly value of such real and personal property shall not exceed one thousand dollars; and that they and their successors shall have full power to grant, sell, lease, or otherwise dispose of said real and personal estate, or any part thereof, at their will and pleasure; and that they and their successors shall have full power, from time to time, to make, institute, and establish such by-laws, ordinances, and regulations, as they may judge proper for the election of their officers; for the election and admission of new members of the said corporation, and the terms and manner of admission; for the better government and regulation of their officers and members; for the fixing of the times and places of the meetings of the said company; and for regulating all the affairs and business of the said corporation; *Provided*, such by-laws and regulations shall not be repugnant to the constitution and laws of the United States and of this State.

Proviso.

Corporate powers continued.

Proviso.

Company managed by nine directors.

SEC. 3. *And be it further enacted*, That the affairs of said company shall be managed and conducted by nine directors, who shall be members of said company, who shall hold their offices for twelve months from the time of their election, and shall then be eligible for any subsequent term.

President to be appointed.

SEC. 4. *And be it further enacted*, That said directors so elected shall at the first meeting appoint a president, who, with a majority of the directors shall constitute a quorum to transact business.

Election for directors, when holden.

SEC. 5. *And be it further enacted*, That Joseph Estell, William Cottinger, Francis Callender, Charles M'Clellan, and Samuel K. M'Graw, be, and the same are hereby appointed commissioners, a majority of whom shall, by giving notice thereof at the court-house door in Huntsville for five days, proceed to hold an election for directors as herein above provided for, at which election all the above named persons shall have a right to vote.

CHAPTER LXXV.

An Act changing the name of Big-Spring in Franklin County.—*Passed December* 31, 1822.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the name of the town of Big-Spring in Franklin county, be changed to that of Tuscumbia.

TRADE AND COMMERCE.—1807.

CHAPTER I.

Extracts from "An Act respecting Slaves," passed in 1805, and re-enacted in 1807.

Trading with slaves prohibited.

Sec. 9. *And be it further enacted,* That no person whatsoever shall buy, sell, or receive, of, to, or from a slave, any commodity whatsoever, without the leave or consent of the master, owner, or overseer of such slave, expressing the article so permitted to be bought, sold, or bartered. And if any person shall presume to deal with any slave without such leave or consent, he or she so offending shall forfeit and pay to the master or owner of such slave, four times the value of the thing so bought, sold, or received, to be recovered with costs, by action upon the case, in any court having cognizance of the same, within this territory, and shall also forfeit and pay the further sum of twenty dollars to any person who will sue for the same, with costs, before any justice of the peace, or on failure or refusal so to pay, shall, by order of such justice, be committed to prison until he or she make such payment; and any slave offering to sell any article without leave in writing from his master or owner, shall receive ten lashes, by order of any justice of the peace before whom he or she is convicted.

Masters not to license their slaves to trade.

Sec. 10. *And be it further enacted,* That if any master or owner of a slave shall license such slave to go at large and trade as a free man, the master or owner shall forfeit and pay the sum of fifty dollars, one moiety to the use of any person suing for the same, and the other moiety to the use of the territory; and if after conviction such slave shall be found so going at large and trading, the master or overseer shall again be liable to the like penalty, to be recovered as aforesaid, and so, as often after conviction as such slave shall be found so going at large and trading.

CHAPTER II.

Extract from an Act concerning the Towns of Mobile and Huntsville.—*Passed December* 12, 1816.

Inspector of flour in Madison coun-

Sec. 4. *And be it further enacted,* That there shall be appointed an inspector of flour at Ditto's landing, in the county of ty—oath and duty. Madison, whose duty it shall be to examine and inspect all barrels of flour that may be offered by any person for inspection, and to mark upon each barrel its quality, which said inspector shall, previous to entering on the duties of his office, take an oath or affirmation, faithfully and impartially to perform and execute all the duties relating to said office, for which services he shall be entitled to demand and receive from the owner or person so landing said flour, for each and every barrel so examined, inspected, and branded, six and one quarter cents. Fees.

CHAPTER III.

An Act for the Government of Gin Holders, and for other purposes.—*Passed November* 16, 1818.

Owners to mark bales. Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That it shall be the duty of every gin holder to mark on each and every bale of cotton, by him ginned and baled, his or her proper name, at full length, and also the place of his or her residence.

Penalty for violation. How recoverable, half to the territory and half to the informer. Sec. 2. *And be it further enacted,* That if any person or persons shall violate any provision in the foregoing section, he, she, or they shall be liable to a penalty of one hundred dollars, to be recovered in any court of record, by action of debt, and the one half of such recovery shall accrue to the use of the territory, and the other half to the use of the party who shall sue for the same.

Penalty for false sample. Sec. 3. *And be it further enacted,* That any and every person or persons who shall hereafter be guilty of furnishing or exhibiting any false sample of any baled cotton, by him, her, or them offered for sale, he, she, or they shall be liable to a penalty of one hundred dollars, to be recovered by action of debt, in any court of record, in addition to such damages as may be sustained by the purchaser or purchasers of such cotton, so falsely represented; and the one half of such penalty shall accrue to the use of the territory, and the other half to the use of the party who shall sue for the same.

Punishment for fraud. Sec. 4. *And be it further enacted,* That any person or persons who shall commit any fraud in the packing or baling of cotton, by placing good cotton on the outside of such bale, (commonly called plating) when the interior part thereof is composed of inferior cotton, or by putting and mixing with the cotton contained in any bale, any other material or substance, than ginned cotton, shall be liable to prosecution by indictment, and, on conviction, shall be fined, in such sum as the jury trying the same may deem proper; and moreover be imprisoned at the discretion of the court, not exceeding thirty days, besides double damages, to be recovered at the suit of the party aggrieved.

When to commence. Sec. 5. *And be it further enacted,* That the provisions of the foregoing act shall not be in force till the first day of April next.

CHAPTER IV.

An Act to regulate Sales at Auction.—*Passed November* 21, 1818.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened,* That from and after the first day of March next, there shall be levied, collected, and paid, upon all sales by way of auction, as hereafter described, which shall be made within the Alabama territory, the respective rates and duties following, to wit: the sum of one dollar for every hundred dollars of the purchase money arising by sale at auction, of goods, wares, and merchandise, and the sum of twenty-five cents for every hundred dollars of the purchase money arising by sale at auction of ships or vessels; and at the same rate for any greater or lesser sum, except as herein after excepted; the said respective rates and duties to be paid by the auctioneer or person making such sales at auction, out of the moneys arising from each and every such sale: *Provided always,* that nothing in this act contained shall extend to any sale or sales by auction, of goods, wares, or merchandise, made pursuant to, or in execution of any rule, order, decree, sentence, or judgment of any court of the Alabama Territory, or made in virtue, or by force of any distress for rent, or other cause for which a distress is allowed by law, or made in consequence of any bankruptcy, or insolvency, pursuant to any law concerning bankruptcies, or insolvencies, or made in consequence of any general assignment of property and effects, for the benefit of creditors, or made by or on behalf of executors or administrators, or made pursuant to the directions of any law of the Alabama Territory, touching the collection of any tax or duty, or disposal by auction of public property of the United States, or of the Alabama Territory, nor to any such sale or sales by auction of ships or vessels, their tackle, apparel, and furniture, or the cargoes thereof, which shall be wrecked or stranded within the Alabama Territory, and sold for the benefit of the ensurers or proprietors thereof.

Rates.

Proviso.

SEC. 2. *And be it further enacted,* That no person after the first day of March next, shall exercise the trade or business of an auctioneer, by the selling of any goods, wares, or merchandise whatsoever, by auction, or any other mode of sale, whereby the best or highest bidder is deemed to be the purchaser, unless such person shall have a license, issued pursuant to the directions of this act, on pain of forfeiting, for every such sale at auction, the sum of twenty dollars, together with the sums or duties payable by this act, upon the goods, wares, and merchandise so sold: *Provided, however,* that nothing herein contained shall be construed to require a license for the sale at auction of any estate, goods, chattels, or other thing, which by this act are not made liable to duty, or exempted from duty.

To retain license.

Proviso.

SEC. 3. *And be it further enacted,* That the governor of the Alabama territory shall grant licenses to such persons, in each and every county or corporate town as he may think proper, for a

Governor to grant licenses.

term not exceeding two years, at any one time, to exercise the trade or business of an auctioneer, and such licenses may and shall renew; *Provided, however*, that no such license shall be granted or renewed, until the person or persons applying for the same, shall have become bound to the Alabama territory, with one or more sureties to the satisfaction of the governor, or the person performing the duty of governor, in the sum of not more than three thousand nor less than five hundred dollars, at the discretion of the governor, or person issuing the license; conditioned that he will, on the first day of January and July, in each year, while he shall continue to exercise the said trade or business, render to the person or persons, who, under this act shall be authorized to receive the same, a true and particular account in writing, of the moneys or sums for which any goods, wares, and merchandise, made liable to duty by this act, have been sold at every sale at auction by him made, and of the several articles, lots, and parcels which shall have been sold, the price of each article, lot, or parcel, in every such sale, by whom bought, that is to say: first from the date of such bond, until such of the aforesaid days as shall accrue next thereafter, and thenceforth from the day to which an account shall have been last rendered, until such of the said days as shall next thereafter ensue, and so on in succession, from one of the said days to another, so long as he shall continue to exercise his said trade or business; and also shall pay over all such sums of money as may arise upon said sales, in manner as shall be herein after provided, which sums he is hereby authorized and directed to retain out of the produce of each sale made as aforesaid.

Proviso.

Pay over, &c.

Duties to be paid to tax collector.

SEC. 4. *And be it further enacted*, That the accounts to be rendered, and the duties to be from time to time paid as aforesaid, by any auctioneer, shall be rendered and paid to the tax collector, of that county, in which such sales shall have been made, and every auctioneer shall make oath or affirmation, according to the best of his knowledge and belief, to the truth of every account which he shall render before the officer to whom such account shall be rendered, and who is hereby authorized to administer the said oath or affirmation; in default of which, such account shall not be deemed to be duly rendered, according to the condition of the bond of such auctioneer; and to the end, that such accounts may be accurately kept and rendered, it is hereby made the duty of every auctioneer, to enter from day to day, as often as any sale shall be made, in a book, or on paper, to be kept by him for that purpose, the amount and particulars of the respective sales by him made, which book or paper shall at all reasonable times, upon request made, be submitted for examination to the officer to whom the account is to be rendered and duties paid, on pain of forfeiting for every refusal to comply with such request, the sum of twenty dollars.

Sales entered in a book.

Forfeiture.

Commission.

SEC. 5. *And be it further enacted*, That every auctioneer, out of the proceeds of the duties which he shall retain and pay as aforesaid, shall be allowed a commission of one per centum upon the amount thereof, for his trouble in and about the same.

Sec. 6. *And be it further enacted*, That if any auctioneer shall wilfully swear or affirm falsely, touching any matter, herein before required to be verified by oath or affirmation, he shall suffer the pains and penalties which by law are prescribed for wilful and corrupt perjury, and shall moreover forfeit his office, and be incapable of afterward holding any office under the Alabama territory.

Penalty for false oath.

Sec. 7. *And be it further enacted*, That it shall be the duty of the tax collectors aforesaid, in their respective counties, and they are hereby authorized to collect the duties imposed by this act, and to prosecute for the recovery of the same, and for the recovery of any sum or sums which may be forfeited by virtue of this act, and pay the same into the territorial treasury; and all fines, penalties, and forfeitures, which shall be incurred by force of this act, shall and may be sued for and recovered in the name of the Alabama territory, or of the tax collector within whose county any such fine, penalty, or forfeiture shall have been incurred, by bill, plaint, or information; one moiety thereof to the territory, and the other moiety thereof to the use of the person who, if a tax collector shall first discover, if other than a tax collector, shall first inform of the cause, matter, or thing, whereby any such fine, penalty, or forfeiture, shall have been incurred, before any court of law within the Alabama territory, having jurisdiction thereof.

Collector to prosecute and pay into the treasury.

CHAPTER V.

An Act concerning Hawkers and Pedlers.—*Passed November 21, 1818.*

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That from and after the first day of March next, there shall be answered and paid by every hawker, pedler, or other trading person or persons, going from town to town, and from one plantation to another (except as herein after excepted) carrying to sell, or exposing to sale any article of goods, wares, or merchandise, the sum of ten dollars, for a license, to be given him, her, or them, for and in each and every county in this territory, wherein he, she, or they, may desire to sell, or expose to sale, any such goods, wares, or merchandise, to be paid by the person receiving the same, into the county treasury, to be applied to county purposes.

License.

Sec. 2. *And be it further enacted*, That if any such hawker, pedler, or other person or persons, from and after the said first day of March next, is found trading as aforesaid, without or contrary to such license, such person shall for each and every such offence, forfeit the sum of one hundred dollars, one moiety thereof to the informer, and the other moiety thereof to the county wherein the same may be forfeited.

Penalty.

Sec. 3. *And be it further enacted*, That it shall and may be lawful for the clerk of the county court, of each and every county

Clerk grant license.

in this territory, and he is hereby directed, appointed, and required, upon the terms aforesaid, to grant a license, to be by him subscribed, to every such hawker, pedler, or other trading person, for which license the said clerk, for issuing and recording the same, shall and may receive the sum of two dollars, as a fee in addition to the said tax.

For forging license.

SEC. 4. *And be it further enacted*, That if any person or persons whatsoever shall forge or counterfeit any license or licenses, or travel with such forged or counterfeited licenses, knowing the same to be forged, for the purposes aforesaid, such person shall forfeit the sum of two hundred dollars, one moiety thereof to the county, and the other moiety to him that shall prosecute and sue for the same, to be recovered before any court having competent jurisdiction.

SEC. 5. *And be it further enacted*, That nothing herein contained shall extend or be construed to extend, or hinder any person or persons from selling or exposing to sale any sorts of goods or merchandise in any public market or fair within this territory, but that such person or persons may do therein as they lawfully might have done before the making of this act, any thing herein contained to the contrary notwithstanding.

CHAPTER VI.

An Act for the Government of the Port and Harbour of Mobile.—*Passed November* 21, 1818.

Harbour-master.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Alabama Territory, in general assembly convened*, That the governor of this territory shall from time to time, as often as it shall be requisite, appoint some proper person to be harbour-master of the port of Mobile, and the said harbour-master, before he enters upon the duties of his office, shall execute a bond to the governor of this territory with two sufficient securities, to be approved of by said governor, in the sum of three thousand dollars, conditioned for the faithful and impartial fulfilment of his duties required of him by this act, and shall also take an oath duly and faithfully to execute the same.

Duties.

SEC. 2. *And be it further enacted*, That the said harbour-master shall have authority to regulate and station all ships and vessels in the bay or harbour of Mobile, within the limits of the said corporation, and at the wharves thereof, and remove, from time to time, such ships or vessels as are not employed in receiving or discharging their cargoes, to make room for such others as require to be more immediately accommodated, for the purpose of receiving and discharging theirs; and as to the fact of their being fairly and *bona fide* employed in receiving or discharging their cargoes, the said harbour-master is hereby constituted the sole judge; and the said harbour-master shall have authority to determine how far, and in what instances it is the duty of the masters and others, having charge of ships and vessels, to accommodate each other in their respective situations; and if any master or other person shall resist or oppose the said harbour-master in the execution of the duties of his office, such master, or other person, having charge of any ship or vessel, or other person whatsoever, shall for every such offence forfeit and pay the sum of fifty dollars, to be recovered with cost of suit, in the name of the treasurer of the town of Mobile, before any court having cognizance thereof, all of which fines when collected shall be paid to the said treasurer, for the use of the poor of said town. Penalty.

SEC. 3. *And be it further enacted,* That it shall be the duty of the said harbour-master to superintend and enforce all laws of this territory, and all the laws of the town of Mobile, for preventing and removing all nuisances whatsoever, in or upon the wharfs within the corporate limits of said town. Nuisances.

SEC. 4. *And be it further enacted,* That it shall be the duty of all persons acting as pilots in the port or bay of Mobile, to register their names and places of abode respectively, in the office of the said harbour-master, and the name, size, and dimensions of the respective pilot boats used by him or them. Register.

SEC. 5. *And be it further enacted,* That the said harbour-master shall have power to order any branch pilot or deputy pilot, whom he may find in the town of Mobile, to return to his station at Mobile Point, and any pilot refusing to comply with said order, or who shall evade the same, or shall refuse or neglect to perform any of the duties herein before imposed upon him, shall on due proof thereof, made to the master and wardens of said port, be subject to a fine not exceeding fifty dollars, to be recovered with costs of suit, before any court having cognizance thereof, in the name of the treasurer of the town of Mobile, or to be rendered incapable of acting as a pilot thereafter, as in the judgment of the said master and wardens may be deemed proper. Deputy pilot.

SEC. 6. *And be it further enacted,* That the said harbour-master, in case of sickness or temporary absence, shall have power to appoint a deputy, and the same to remove or displace, and appoint another in his room; and further, the said harbour-master shall have power to demand and receive from the commander, owners, or consignees, or either of them, of every ship or vessel that may enter the port of Mobile, and load, unload, or make fast, to any of the wharves within the limits of said town, at and after the rate of three cents per ton, to be computed from the tonnage expressed in the registers of such ships or vessels respectively, and no more: *Provided always,* That the sums shall not extend to chalons, flats, or keel boats, which are employed in the river trade, unless upon the application of the person having charge of such chalon, flat, or keel-boat so employed; the said harbour-master shall interfere and adjust any difference respecting the situation or position of such flat, or boat, which differences the said harbour-master is authorized to hear and determine, in which case the said harbour-master may demand, and recover, in manner aforesaid, from the party in fault in the premises, the sum of two dollars for every difference so adjusted, and no more. Rate. Proviso.

Officers.

SEC. 7. *And be it further enacted*, That it shall be lawful for the governor of this territory to appoint as often as shall be necessary, one fit and proper person to be master, and three other fit and proper persons to be wardens of the said port of Mobile, who shall be called the Master and Wardens of the Port of Mobile; and also two or more sufficient persons to be branch pilots of the said port, each of which branch pilots may appoint deputies under him: *Provided*, That no person shall be appointed a deputy until he shall have obtained a certificate from the master and wardens aforesaid, or any three of them, under their hands, that he is duly qualified for such office; and if any person not appointed as aforesaid, shall pilot any ship or other vessel either into or out of the bay or harbour of Mobile, he shall forfeit and pay the sum of twenty-five dollars, unless such ship or vessel be in distress, or no regular pilot can be had.

Oath.

SEC. 8. *And be it further enacted*, That the master and wardens hereafter to be appointed, before they enter upon the execution of the said offices, shall severally take an oath before the governor (or any other person authorized by law to administer oaths of office) in the following words:—"I, A. B. will well, truly, and faithfully, according to the best of my skill and understanding, execute the powers and duties vested in, or enjoined on me by law, as master, (or one of the wardens, as the case may be) of the port of Mobile: So help me God."

Keep office.

SEC. 9. *And be it further enacted*, That the said master and wardens shall keep an office in the town of Mobile, and shall cause to be made, in a book to be kept for that purpose, an entry of all their proceedings by virtue of this act, to which all persons may have recourse; and they shall be empowered to receive all pilotage money, which shall become due to any pilot, or deputy pilot, and on neglect or refusal of payment by the person who ought to pay the same, may sue for and recover the same, in the name of the said master and wardens, with costs, before any court having cognizance thereof; and in the said office shall be kept a separate account with each pilot, of all moneys received to his use, and the amount so due to each pilot, shall be paid to them respectively, once in every three months, after deducting five per centum for the trouble of the said master and wardens; and all fines and forfeitures arising under this act, except the forfeited recognizances of pilots and deputy pilots, shall be sued for and recovered as aforesaid, by and in the name of the said master and wardens; and no such suit shall discontinue or abate by the death, resignation, or removal from office of the said master or wardens, and all such fines and forfeitures, and the sums recovered on any forfeited recognizance, and not applied in discharge of damages as herein after mentioned, shall be paid to the said master and wardens, and be by them applied towards defraying their necessary expenses, arising in the execution of their trust.

Suits not abate.

Give security.

SEC. 10. *And be it further enacted*, That every branch pilot or deputy pilot hereafter to be appointed, before he takes upon himself the execution of his office, shall enter into a recognizance to the governor of this territory, with two sufficient securities, to be approved by the master and wardens aforesaid, each branch pilot in the sum of one thousand dollars, and each deputy pilot in the sum of five hundred dollars, conditioned that he will diligently and faithfully execute the trust reposed in him as a pilot or deputy, (as the case may be) according to the directions of this act, and such rules and orders as shall be given in pursuance thereof; and every recognizance, if forfeited, may at the request of any person aggrieved, be prosecuted in any court of the said town or territory having cognizance thereof, to judgment and execution, as in other cases; and the amount of such recognizance, when recovered, shall, by an order of the court in which the same is recovered, be paid to the said master and wardens; and the said master and wardens, or any three of them, shall in such case, and also at any time after said suit brought on such recognizance, if requested by any party interested therein, examine into and ascertain the damages sustained by the persons so aggrieved, and shall apply the moneys so to be received, or as much as shall be requisite to pay the damages so ascertained, and shall make report in writing to the court in which such recovery shall be had, of the damages so ascertained and paid: *Provided, however,* That if the branch or deputy pilot so offending, shall before judgment is obtained on his recognizance as aforesaid, pay to the party aggrieved the damages so ascertained by the said master and wardens, in manner aforesaid, together with cost of suit, the suit on such recognizance shall be discontinued.

Examine hatches.

SEC. 11. *And be it further enacted,* That the said master and wardens, or any one of them, shall, if called upon by the person commanding any ship or vessel arriving from sea, inspect the manner in which the hatches of such ship or vessel were secured previous to the opening thereof, for the purpose of discharge, and shall be present at the opening of the same, and shall upon every such survey, certify under his hand how the said hatches appeared to him, for which certificate he shall be entitled to two dollars, and the said master and wardens, or any two of them, shall be surveyors of damaged goods brought into the port of Mobile, in any ship or vessel, and with the assistance of one or more skilful carpenters, shall be surveyors of any damaged vessel, and any vessel deemed unfit to proceed to sea, and they shall upon every such survey certify under their hands, how the vessel or vessels so surveyed appeared to them, and shall cause entries to be made in a book to be kept for that purpose in their office, and for each certificate and entry they shall be entitled to two dollars, and for every duplicate thereof, one dollar: And the said wardens shall severally be entitled for their services as surveyors of damaged goods or vessels, at the rate of two dollars and fifty cents per day, and further, it shall solely belong to the said master and wardens, or any two of them, to order and direct the sale of damaged goods by public auction, giving notice of such public sale at least two days before such sale is to take place,

Surveyor of goods.

Publication.

in some newspaper published in the town of Mobile, and at least two of the said wardens shall be present at such public sale, and shall certify to the truth of the account of sales of the auctioneer by whom such damaged goods shall be sold, and for such attendance and certificate shall be entitled to the sum of ten dollars.

Shall not be concerned.

SEC. 12. *And be it further enacted*, That neither the master nor wardens aforesaid, shall be concerned, directly or indirectly, in any pilot-boat, or with any branch pilot, in respect to the business of his trust.

Make rules.

SEC. 13. *And be it further enacted*, That the said master and wardens, with the consent of the governor of this territory, may make such rules and orders for the better government of the said pilots as they shall deem proper, and the same from time to time to revoke and amend, and any three of the said master and wardens may impose fines for the breach of any such rules and orders, upon any of the said pilots or deputy pilots: *Provided*, that no fine for any offence shall exceed twenty-five dollars, unless any branch pilot or his deputy shall neglect or refuse to give all the assistance in his power to any ship or vessel appearing in distress on the coast or in want of a pilot; and in such case every pilot or deputy pilot, so offending, shall at the discretion of any three of the said master and wardens be fined in any sum not less than twelve and a half dollars, nor more than fifty dollars, or be suspended from his office until the pleasure of the governor of this territory be made known.

Proviso.

Fine.

SEC. 14. *And be it further enacted*, That the said master and wardens shall furnish every pilot aforesaid, with printed instructions in French and English, to be shown by such pilot to the master or commander of every vessel as soon as he shall go on board to take charge of such vessel to pilot her into the bay and harbour of Mobile.

Each pilot to own part of boat.

SEC. 15. *And be it further enacted*, That from and after the first day of March, one thousand eight hundred and twenty, every branch pilot of the bay and harbour of Mobile, shall be owner or part owner of a pilot-boat of not less than twenty-feet keel and seven feet and a half beam, and to row not less than twelve oars, and shall keep such boat exclusively employed as a pilot-boat, and every such branch pilot not owning or employing a pilot-boat as aforesaid, shall forfeit his office, and in the mean time shall be suspended as aforesaid by any three of the master and wardens aforesaid.

Extra pay.

SEC. 16. *And be it further enacted*, That the master or owners of any ship or vessel appearing in distress, and in want of a pilot on the coast, shall pay unto such branch or deputy pilot who shall have exerted himself for the preservation of such ship or vessel, such sum for extra services as the said master or owner and pilot can agree upon: and in case no such agreement can be made, the master and wardens aforesaid, or any three of them, shall determine what is a reasonable reward, and the sum so determined by them shall be collected in the manner by this act directed for the collection of pilotage.

Bound for half pay.

Sec. 17. *And be it further enacted*, That if the master of any ship or vessel coming into the bay of Mobile, and being without the bar, shall refuse to receive on board and employ a pilot, the master or owner of such ship or vessel shall pay to such pilot, who shall have offered to go on board and take charge of the pilotage of such vessel, half pilotage.

Default.

Sec. 18. *And be it further enacted*, That if any vessel going out of the bay of Mobile, shall carry off to sea, through the default of the master or owner of such vessel, any pilot or deputy pilot, when a boat is attending to receive such pilot or deputy pilot from on board such vessel, the master or owner of such vessel shall pay to the master and wardens of the port of Mobile, besides the pilotage of such vessel, the like wages per month until he shall return to the port of Mobile, as the monthly wages to the mate of such vessel: *Provided*, that such pilot or deputy pilot shall have performed the duties required of him by this act; and if any money shall have been paid to such pilot by the master or owner or factor of such vessel, the same shall be deducted from the moneys to be paid to the master and wardens, for the use of such pilots.

Proviso.

Price of pilotage.

Sec. 19. *And be it further enacted*, That it shall be lawful for every branch or deputy pilot aforesaid, to ask and receive pilotage from any person who shall employ him to pilot any ship or vessel from sea, to within the bars at the mouth of the bay of Mobile, and shall, if required, there safely moor such vessel; and likewise from every person who shall employ him to pilot any ship or vessel from within the bay of Mobile, to the eastward and southward of the said bars, so far that such vessel may safely proceed to sea, at the rate of two dollars for every foot of water such ship or vessel shall draw.

Wages for detainure.

Sec. 20. *And be it further enacted*, That for every day which any pilot aforesaid shall be required to remain or be detained on board any ship or vessel by the master thereof, waiting for a fair wind, or otherwise, he may demand and receive the sum of two dollars: *Provided, however*, that nothing shall be demanded or received from the master or owner of any vessel employed between the port of Mobile and any other port in this territory, for refusing to receive and employ such pilot.

Proviso.

Not applied to packets.

Sec. 21. *And be it further enacted*, That nothing in this act contained shall be construed to apply to the regular packets and traders between Mobile and New-Orleans.

Repeal.

Sec. 22. *And be it further enacted*, That all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.

CHAPTER VII.

An Act for the Inspection of Lumber, and certain other Articles therein named.

Passed December 17, 1819.

Certain county courts may

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That the county court of any county in this state, in which a appoint inspector.

port of entry is now or hereafter may be established, are hereby authorized and empowered to appoint one or more fit and suitable persons, as inspectors of tar, turpentine, pitch, rosin, and lumber.

Inspector to give bond.

Take an oath.

SEC. 2. *And be it further enacted*, That each inspector, before he enters upon the duties of his office, shall enter into bond, with two good and sufficient securities, to be approved of by the said court, payable to the governor for the time being, and his successors in office, in the sum of one thousand dollars, for the faithful performance of the duties of his office; and likewise, shall take and subscribe to the following oath: "I, ———— ————, do solemnly swear, (or affirm,) that according to the best of my abilities, I will comply with, and faithfully fulfil the duties of inspector, according to law: So help me God."

What staves and heading merchantable.

Rosin.

Tar and turpentine.

SEC. 3. *Be it further enacted*, That all staves for exportation shall be made of good and sound timber, free of worm holes, and shall be of the following qualities and dimensions, viz.: Each pipe stave shall be made of white oak, fifty-four inches long, three inches wide, and one inch thick at the thin edge, free of sap: each white oak hogshead stave shall be forty-two inches long, three and one half inches wide, and not less than seven-eighths of an inch thick at the thin edge, and free of sap; each red oak hogshead stave shall be forty-two inches long, three and a half inches wide, and not less than three-fourths of an inch thick at the thin edge; each hogshead heading shall be made of white oak, thirty-two inches long, five inches wide, and not less than one inch thick at the thin edge, and free of sap; each white oak barrel stave shall be thirty-two inches long, three and a half inches wide, and not less than three-fourths of an inch thick at the thin edge, and free of sap; each red oak barrel stave shall be thirty-two inches long, three and a half inches wide, and not less than one inch thick at the thin edge; each barrel heading shall be made of white oak, nineteen inches long, six inches wide, and not less than three-fourths of an inch thick at the thin edge, and free of sap. Each and every barrel of pitch or rosin shall be hooped with six good hoops on each end, and shall weigh three hundred and twenty pounds gross; each barrel of tar and turpentine shall be in good barrels, made of seasoned timber, and shall be bound with seven good hoops on each end, shall be well packed, free of water, strained and clear, without chips, filth, or dirt, and shall contain thirty-two gallons.

Inspector shall brand each barrel of pitch, tar, &c. and record the quantity, &c.

SEC. 4. *And be it further enacted*, That each inspector appointed as aforesaid, shall brand his name, at full length, and place of residence on one head of each and every barrel of pitch, rosin, tar, and turpentine, that he may inspect and pass as merchantable, according to the requisitions of this act; he shall also keep a book, in which he shall enter the quantities of each and every article by him inspected and passed, the name of the person for whom the same was inspected, and his place of residence; and shall give a certificate of the same when required, after the fees for inspecting the same shall have been paid him, charging for said certificate twenty-five cents. It shall moreover be the duty of each and every inspector, appointed under the provisions of this act, to have and keep a brand for the purpose; and each and every barrel of pitch, rosin, tar, and turpentine, that he may be called to inspect, and which shall not be competent to contain the quantities, as before required in the third section of this act, or in any barrel in which he may discover any intentional fraud or neglect, in the manufacture or putting up of the same, to brand on each head and bung stave the word "*condemned.*"

The above articles not to be exported without being inspected.

SEC. 5. *And be it further enacted*, That if any person or persons shall export, or attempt to export from any port or place in this state, to a port or place in another state or foreign port, any of the articles above enumerated, not having been inspected according to the true intent and meaning of this act, or shall attempt to export any that have been condemned by any inspector, shall forfeit the whole of the article or articles so attempted to be exported; to be recovered by action of debt, in any court having jurisdiction of the same, the one half of the proceeds thereof to the use of the person suing for the same, the other half to the state.

Fees of inspector.

SEC. 6. *And be it further enacted*, That the inspectors aforesaid shall receive for their services the following fees, viz.: for inspecting pipe staves and white oak hogshead staves, and heading, per thousand, fifty cents; for inspecting red oak hogshead staves, red oak barrel staves, and white oak barrel staves and heading, per thousand, twenty-five cents; for inspecting and branding pitch, rosin, tar, and turpentine, per barrel, six and a quarter cents.

Inspector required to detect fraud in pitch and rosin.

SEC. 7. *And be it further enacted*, That should any inspector have reason to suspect a fraud, in any barrels of pitch or rosin, that he may be called to inspect, it shall be his duty, and he is hereby authorized, to cut open any number of barrels, not exceeding one for every ten of the whole number so suspected; and upon finding the same partly filled with any thing other than pitch or rosin, with intent to defraud, in that case, the whole number shall be condemned, and branded accordingly, with the word "*condemned;*" and the said inspector shall sell, or cause the same to be sold, at auction, within five days; and the nett proceeds thereof pay into the treasury of the state: and he is hereby required to keep a true and faithful account of the same, in a book for the purpose, and shall be allowed five per centum on the proceeds of all such condemned articles.

If condemned, to sell it.

Neglect of inspectors, how punished.

SEC. 8. *And be it further enacted*, That if any inspector, appointed as aforesaid, shall knowingly and wilfully fail to comply with the duties and requisitions of this act, or shall pass as merchantable any of the before enumerated articles, other than is expressly permitted and required by law, shall forfeit and pay the sum of two hundred dollars, to be recovered by action of debt, in any court having jurisdiction of the same, the one half to the person suing for the same, the other half to the state; and the county court shall thereupon displace him from the office of inspector: *Provided*, that no person shall be eligible to hold the office, or exercise the duties of inspector of any article or articles that he may buy, sell, and traffic in the same.

When this act to take effect.

Sec. 9. *And be it further enacted*, That this act shall take effect the first day of September next.

CHAPTER VIII.

An Act to amend an Act, entitled "An Act for the inspection of Lumber, and certain other Articles therein named," passed at Huntsville on the seventeenth day of December, 1819.—*Passed December* 20, 1820.

Pipe and hogshead staves.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all white oak hogshead and pipe staves intended for exportation, shall hereafter be of the following dimensions, to wit: Hogshead staves, forty-two inches long, three and one half inches wide, and three-fourths of an inch thick, on the thin or heart edge, clear of sap; pipe staves, fifty-four inches long, not less than three inches wide, and three-fourths of an inch thick, on the thin or heart edge, clear of sap.

Inspectors to cull staves.

Sec. 2. *Be it further enacted by the authority aforesaid*, That it shall be the duty of the inspector of staves, from and after this date, when required so to do by the purchaser or seller of staves of any kind, to cull the merchantable from the refuse staves, and the refuse staves so culled shall be the property of the seller: *Provided, however*, That in the event of any person or persons shipping or attempting to ship, any such refuse staves, that he or they shall be liable to the same penalties as are imposed by the act of which this is an amendment. And the inspector of staves, who may cull staves, as required by this act, shall receive the following fees of inspection, to wit: for white oak hogshead and pipe staves, and hogshead heading, seventy-five cents per thousand; for inspecting red oak hogshead staves, red oak barrel staves, and white oak barrel staves and heading, fifty cents per thousand; and for inspecting and branding pitch, rosin, tar, and turpentine, four cents per barrel.

Fees of inspectors.

When no agreement, expenses jointly borne.

Sec. 3. *Be it further enacted by the authority aforesaid*, That in all cases where there is no agreement between the seller and purchaser of any article of lumber, staves, and naval stores to the contrary, all expenses of inspection and directing charges, where said articles are carried to market on rafts, shall be borne and paid jointly by the parties.

Sec. 4. *And be it further enacted by the authority aforesaid*, That this act shall be in force and take effect from and after the passage thereof. And that all acts, and parts of acts coming within the meaning and purview of this act, shall be, and the same are hereby repealed.

CHAPTER IX.

An Act for the Government of the Port and Harbour of Blakeley.—*Passed December 20, 1820.*

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the president and commissioners of the town of Blakeley be, and they are hereby authorized to appoint from time to time, as often as may be requisite, some proper person to be harbour-master of the port of Blakeley, and who shall before he enters upon the duties of his office, take an oath before a justice of the peace, or either of the justices of the county court, truly, faithfully, and impartially to execute the duties required of him by this act.

Commissioners of the town to appoint a harbour-master.

Sec. 2. *And be it further enacted,* That the said harbour-master shall have authority to regulate and station all ships and vessels of every kind in the harbour of Blakeley, within the limits of the corporation of said town, and at the wharves thereof, and also in the rivers Tensa and Appalache, within any distance not exceeding two miles from the foot of Washington-street in said town, and to remove from time to time such ships or vessels as are not employed in receiving or discharging their cargoes, to make room for such others as require to be immediately accommodated, for the purpose of receiving and discharging theirs; and as to the fact of their being fairly and actually employed in discharging their cargoes; the said harbour-master is hereby constituted the sole judge, and the said harbour-master shall have authority to determine how far, and in what instances, it shall be the duty of the master and others having charge of ships and vessels, to accommodate each other in their respective stations: and if any master or other person shall resist or oppose the said harbour-master in the execution of the duties of his office, such master or other person having charge of any ship or vessel, or other person whatsoever, shall for every such offence forfeit and pay the sum of fifty dollars, to be recovered with cost of suit, in the name of "The President and Commissioners of the Town of Blakeley," before any court having cognizance thereof, all of which fines, when collected, shall be paid to the treasurer of the said town, for the use and benefit of the inhabitants thereof.

Powers of harbour-master.

Penalty for resisting harbour-master.

Sec. 3. *And be it further enacted,* That it shall be the duty of the said harbour-master to superintend and enforce the execution of the laws of this state, and the ordinances of the president and commissioners of the town of Blakeley, for preventing and removing all nuisances whatsoever, on and about the wharves, within the corporate limits of the said town; and also, to cause to be extinguished whenever he may think it necessary, all or any fires that may be made upon any of the wharves within said limits.

To remove nuisances.

Sec. 4. *And be it further enacted,* That the said harbour-master, in case of sickness or temporary absence, shall have

Harbour-master to appoint a deputy.

power to appoint a deputy, and the same to remove or displace, and to appoint another in his room.

Compensation to harbour-master.

SEC. 5. *And be it further enacted*, That the said harbour-master shall have power to demand and receive from the commander, owner, or consignees, or either of them, of every ship or vessel that may enter the port of Blakeley and load, unload, or make fast to any of the wharves within the limits of said town, at and after the rate of three cents per ton, to be computed from the tonnage expressed in the registers of such ships or vessels respectively, and no more: *Provided always*, that owners, masters, or consignees of flats, keel-boats, or other craft which may be employed in the river trade, shall not be obliged to pay the said fees to the harbour-master; but upon application of any person having charge of such flat, keel-boat, or other river craft, the said harbour-master shall interfere and adjust any difference respecting the situation or position of such flat, keel-boat, or other river craft; which differences the said harbour-master is hereby authorized to hear and determine, and the said harbour-master may demand and recover in manner aforesaid, from the party in fault in the premises, the sum of two dollars, for adjusting such difference, and no more.

River craft exempt.

Master and wardens, how appointed.

SEC. 6. *And be it further enacted*, That the president and commissioners of the town of Blakeley be, and they are hereby authorized to appoint as often as shall be necessary, one fit and proper person to be master, and three other fit and proper persons to be wardens of the said port of Blakeley, who shall be called the Master and Wardens of the Port of Blakeley. And the master and wardens hereafter to be appointed, shall, before they enter upon the duties of their said offices severally, take an oath before a justice of the peace, or either of the justices of the county court, truly, faithfully, and impartially, to execute the powers and duties enjoined on them by law, as master or warden (as the case may be) of the port of Blakeley.

Duties of master and wardens. Shall keep records.

SEC. 7. *And be it further enacted*, That the said harbour-master and wardens shall keep an office in the town of Blakeley, and shall cause to be made, in a book to be kept for that purpose, an entry of all their proceedings by virtue of this act, to which all persons may have recourse. And the said master and wardens, or any one of them, shall, if called upon by the person commanding any ship or vessel arriving from sea, inspect the manner in which the hatches of such ship or vessel were secured, previous to opening thereof, for the purpose of discharging, and shall be present at the opening of the same; and shall upon every such survey, certify under his hand how the said hatches appeared to him; for which certificate he shall be entitled to two dollars. And the said masters and wardens, or any two of them, shall be surveyors of damaged goods, brought into the port of Blakeley in any ship or vessel, and with the assistance of one or more skilful carpenters, shall be surveyors of any damaged vessels, and any vessel deemed unfit to proceed to sea; and they shall upon every such survey, certify under their hands, how the vessel or vessels so surveyed, appeared to them, and shall cause entries to be made in a book, to be kept

Inspect hatches.

Survey damaged goods and vessels.

as aforesaid; and for each certificate and entry, they shall be entitled to two dollars, and for every duplicate thereof, to one dollar. And the said master and wardens shall severally be entitled to receive for their services as surveyors of damaged goods or vessels, at the rate of three dollars per day. And it shall solely belong to the said master and wardens, or any two of them, to order and direct the sale of damaged goods by public auction, giving notice of such public sale, at least three days before such sale is to take place, in some newspaper published in the county of Mobile, or by posting up notice of such sale in two of the most public places in said county, and at least two of said wardens shall be present at such public sale, and shall certify to the truth of the account of sales of the auctioneer, by whom such damaged goods may be sold; and for such attendance and certificate, the said master and wardens shall be entitled to the sum of eight dollars.

Compensation as surveyors.

Direct sale of damaged goods.

CHAPTER X.

An Act to Cede to the United States, the Jurisdiction of this State, to certain Lands for the purposes therein mentioned.—*Passed December* 16, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That Addin Lewis, Henry V. Chamberlain, and Lewis Judson, be, and they are hereby appointed commissioners, with full powers, in their discretion, and in such manner and form as they shall judge necessary and proper, to declare the consent of the legislature of this state, that such tract of land on Mobile point, Dauphin Island, or Pelican Island, in this state, as they shall judge necessary for the purpose of erecting a light-house thereon, shall be subject to the jurisdiction of the United States; and thereupon the jurisdiction of the said lands shall be vested in the United States: *Provided, however,* that such cession shall not exceed fifty acres at either of the said places: *And provided also,* that such cession shall not be deemed to extend to prevent the execution of any process, civil or criminal, under the authority of this state.

Commissioners to declare the consent of this state.

Proviso.

SEC. 2. *And be it further enacted,* That such declaration of the consent of the legislature of this state, shall be explicitly defined by accurate metes and bounds, the situation of the lands; the jurisdiction whereof shall be ceded in virtue of this act; which description shall be filed in the office of the secretary of state of this state.

Bounds of the cession to be ascertained.

CHAPTER XI.

An Act for the Relief of the Master Builders and Mechanics of the State of Alabama.—*Passed June* 15, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That from and after the first day of July, in the year of our Lord one

Master builders to have a lien.

thousand eight hundred and twenty-one, master builders, and mechanics of every denomination, in the state of Alabama, contracting and engaging to put up and erect buildings of every description, or engaging to perform jobs of work on any such buildings, shall be entitled to, and shall have a lien on all such buildings as they may put up, or erect, or work upon, until the compensation for services shall be fully paid and satisfied, to the amount agreed upon between the contracting parties, unless a contrary stipulation be expressly agreed upon at the time the contract is made and executed.

Lien, how enforced.

Sec. 2. *And be it further enacted*, That the persons aforementioned shall enforce the aforesaid lien only in the following cases, that is to say: First, where the contract shall be reduced to writing, and signed by the parties making the same. Secondly, where the amount shall be liquidated between the contracting parties, and a nett balance be struck in favour of the person contracting to perform work as aforesaid, or to find or provide materials. Thirdly, where the contracting parties refer the matters in controversy between them to arbitration, and an award be made in favour of the master builder or mechanic. Fourthly, when the judgment of a competent tribunal shall be rendered in favour of the master builder or mechanic, it being well understood that should their claim be contested, even where a nett balance be struck, they shall proceed according to a due course of law to judgment and execution; as also where they refer their matters in dispute to arbitration, and an award be made in their favour, unless the contrary be expressly stipulated, or where such award is made under a rule of court from the competent tribunal.

Contracts to be recorded.

Sec. 3. *And be it further enacted*, That all contracts entered into pursuant to the provisions of this act, shall be recorded in the clerk's office of the inferior or county court, for the county where the contract shall be made, within thirty days after their execution, for the inspection and examination of all persons whom it may concern; otherwise the party in whose favour the same shall be made, shall lose the benefit of his privilege and lien, and shall be in the same situation as if this act had not been passed.

CHAPTER XII.

An Act imposing a Tax on Non-Residents and Transient Persons, making Sale of Goods, Wares, and Merchandise in this State.—*Passed June* 16, 1821.

Transient persons taxed.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That all persons not resident citizens of the state of Alabama, bringing in or importing goods, wares, merchandise, or other commodities for sale, shall, when the same are sold, pay such state, county, city, or town tax on the same, as persons residing in this state are now compelled by law to pay, unless the same be placed in the hands of an auctioneer for sale, and be afterward sold by him; any law, usage, or custom to the contrary thereof in any wise notwithstanding.

Importers to give estimate on oath.

SEC. 2. *And be it further enacted*, That all persons bringing in or importing goods, wares, or merchandise, or other commodities as aforesaid, shall previous to making sale thereof, by themselves or agent, deliver in under oath an estimate of the amount of value of all such goods, wares, or merchandise, as he or they may bring in or import into the said ports, subject to taxation by the existing laws, and pay over to the clerks of the county courts, in which the said ports may be, the said state, county, or city tax on the same, or enter into bond in a sufficient sum, with good and sufficient security, payable to the chief justice of the county into which the same shall be brought, conditioned that he or they will well and truly pay and satisfy such state, county, or city tax as persons residing in the state of Alabama, for all goods, wares, or merchandise, or other commodities they may actually sell, are now compelled to pay by law on all similar sales of goods, wares, or merchandise, &c. which said clerk shall, where the amount of taxes shall be paid, pay the same over to the persons authorized by law to collect the said state, county, or city tax. And when bond and security shall be given, he shall place the same in the hands of proper officers for collection, and the amount thereof when by him received, shall be paid over in manner above directed.

Tax payable to the clerk of county court, Or give security.

Clerks to pay over.

Clerks to keep records.

SEC. 3. *And be it further enacted*, That the said clerks shall keep a book, into which they shall make regular entries of their proceedings, and publish once in every three months an estimate of all the taxes paid, together with the names of the persons who shall have paid the same, and they shall receive as compensation for their services in taking bond as aforesaid, the sum of fifty cents, and such per centum on all collections as is allowed by law for collecting the state, county, or city tax; and should the said clerks refuse to perform the services required of them by this act, the chief justice of the county where such refusal shall take place, shall forthwith appoint some fit person to perform said duties, who shall take and subscribe an oath faithfully to perform the services enjoined on them by this act, and enter into bond with sufficient security, and in a sufficient sum to ensure the correct discharge of the aforesaid duties, which bond shall be made payable to the chief justice making said appointment. And should the condition of any of the bonds provided for, and ordered to be taken by this act, be violated, prosecutions shall be forthwith instituted, and carried on to final judgment and execution in the name of the chief justice, to whom the same shall be given, and against the person or persons contravening the same.

Penalty for failure.

Penalty for violating this act.

SEC. 4. *And be it further enacted*, That any and all persons contravening the provisions of this act, shall forfeit and pay the sum of one hundred dollars for each and every offence, to be recovered in any court having competent jurisdiction of the same, one half to the use of the informer or person suing for the same, and the other half to the use of the county where the offence may be committed.

CHAPTER XIII.

An Act authorizing the Judge of the County Court of Mobile County to appoint a public Weigher in the City of Mobile.—*Passed December* 31, 1822.

Whereas difficulties and disputes frequently arise between the seller and the purchaser of cotton and other articles of merchandise, with regard to the weight, and for the remedy thereof:—

Judge to appoint weighers.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the judge of the county court for the county of Mobile be, and he is hereby authorized to appoint one or more suitable persons, not exceeding two, who shall be known as a public weigher for the city aforesaid. And the person appointed a public weigher as aforesaid, before he enters upon the duties of his office, shall be required to give bond with good and sufficient security to the judge of the county court aforesaid, in the sum of one thousand dollars, for the faithful performance of the duties enjoined on him by this act; and shall also take and subscribe an oath, that he will without favour, partiality, or affection, discharge the duties of his office.

Bond.

Oath.

Judge to fix compensation.

SEC. 2. *And be it further enacted,* That the judge of the county court aforesaid, shall have power and authority to make such rules and orders for the government and compensation of said public weigher, as to him may seem meet, and the same to amend and revoke, alter and amend from time to time, as he may deem proper; and whenever the said public weigher may be called upon by any person or persons to weigh cotton, or any other article that may, upon examination thereof, prove to be partially wet or damaged, the said public weigher shall have full power and authority to decide and determine the loss of weight such cotton or other article has sustained in consequence of being weighed in a wet or partially damaged state; and the said public weigher shall make such allowance in the actual weight for such wet or damage as may to him appear equitable and just between the vender and the purchaser, or the parties interested therein; and the returns of cotton or any other article made by the public weigher as aforesaid, after having been weighed at the scales of such public weigher, shall be binding upon all parties interested therein, so far as regards the weight: *Provided, however,* that any person or persons whatsoever shall at all times have the right to weigh his or their own cotton, or any other article at their own scales.

Weigher to assess damages.

Weighers' return binding.

Proviso.]

Persons aggrieved, may complain to judge, who shall arraign and try the weigher.

SEC. 3. *And be it further enacted,* That the judge of the county court aforesaid, on charges preferred by any person or persons feeling themselves aggrieved by the neglect of the said public weigher, and on affidavit being made in support of the same, it shall be the duty of the judge aforesaid to summons the said public weigher to appear before him at such times as he may appoint; giving at least two days notice, and furnishing at the same time a copy of the charges as preferred, to enable him to appear with his proof; and if on a fair investigation of the charges from the testimony adduced, the said public weigher shall have been found guilty of any wilful neglect of the duties of his office, then and in that case it is hereby made the imperative duty of the judge aforesaid to dismiss him from office, and appoint another suitable person to fill the vacancy: *Provided always*, that the cost of said investigation shall be paid by the party in default: *And provided also*, that all witnesses shall be entitled to the same pay, and the cost shall be collected as in other cases: *Provided also*, that it may be lawful for any person or persons who may be injured by the conduct of the public weigher, to put in suit the bond aforesaid, in any court having jurisdiction thereof, and judgment shall be rendered for the penalty of said bond, to be discharged by payment of the amount of damages found actually to be sustained, together with costs of suit: *Provided*, that nothing in this act contained, shall be intended to force persons to have their cotton and other produce weighed by the aforesaid weigher, or have damages thereon assessed; unless they shall think proper so to do.

Proviso.

CHAPTER XIV.

An Act for the Government of the Port and Harbour of Mobile.—*Passed December 23, 1822.*

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That there shall be, and hereby is established a board of wardens for the port of Mobile, to consist of five discreet persons, to be chosen by the legislature, one of whom shall be chosen as harbour-master, and who shall hold their office during the term of three years; and that the said harbour-master and wardens, and their successors in office, shall compose the said board of wardens hereby established, and shall be called and known by the name of *the harbour-master and wardens of the port of Mobile*, and shall have full power and authority to have and use a common seal, with such device as they may think proper, and the same to break, alter, and renew at their pleasure: and further, that all fines, penalties, and forfeitures, arising under this act, or the rules and regulations to be made by the said board of wardens in pursuance thereof, shall and may be sued for, and recovered in any court having cognizance thereof, by the said board of harbour-master and wardens, or their successors in office, by their said name of the harbour-master and wardens of the port of Mobile.

Board of wardens for the port of Mobile established.

Their style. To have a common seal.

May sue for fines.

SEC. 2. *And be it further enacted*, That each and every person, who, at any time hereafter, shall be appointed harbour master or warden of the port of Mobile, shall, before he enters upon the duties of his office, take and subscribe an oath, or affirmation, before the mayor or one of the aldermen of the city of Mobile, in the following words: "I will well, truly, and

Harbour-master and wardens to take an oath.

Form of oath.

faithfully, according to the best of my skill and understanding, execute and perform the powers and duties vested in or enjoined upon me by law, as harbour-master (or one of the wardens, as the case may be,) of the port of Mobile;"—which oath or affirmation shall be filed in the office of the clerk of the corporation of the city of Mobile.

Oath, where filed.

To appoint a clerk. To keep an office. Harbour-master, wardens, and clerks to give attendance.

SEC. 3. *And be it further enacted*, That the said harbour-master and wardens shall appoint a clerk, and keep an office in the city of Mobile, at which office one or more of the wardens, or harbour-master, shall give occasional attendance, and their said clerk shall give attendance daily, Sundays and the fourth day of July excepted; and that said board of harbour-master and wardens shall cause to be made and kept by their clerk, in a book or books by them to be provided for that purpose, regular fair minutes and entries of all orders, regulations, transactions, and proceedings of the said board, under and by virtue of this act; and which said book or books or entries shall and may be inspected by any person or persons desiring to inspect the same; such person or persons desiring to inspect the same, paying the said clerk twenty-five cents, each time the said books shall at his or their request be opened and examined; and further, the said clerk shall give true copies of such entries or minutes so to be made in said book or books, to such person or persons as may require the same, such person or persons paying therefor to the said clerk, whatever sum the harbour-master and wardens shall deem a sufficient compensation, to be established by the board of master and wardens.

Harbour-master and wardens—their times of meeting.

SEC. 4. *And be it further enacted*, That the said harbour-master and wardens shall meet at their office in the city of Mobile, on Monday in every week, and at such other time or times as the harbour-master or two of the wardens may direct and appoint: and that the said board, any three of whom shall be a quorum, shall have full power and authority, when so met, from time to time, to grant licenses, under the limitations herein after in that behalf prescribed, to such and so many fit and proper persons not exceeding ten in the whole, as they may deem necessary and sufficient, to act as pilots for the safe pilotage of ships and vessels to and from the port of Mobile; and also to grant licenses to such person or persons as the said board shall approve of, to act as deputy pilots under such said licensed pilots, not exceeding the whole number of pilots thus to be appointed; and further, that the said board of master and wardens shall have full power and authority at any time or times, to revoke and annul any license that may be by them granted to any person to act as pilot of any description, or as deputy pilot, or to suspend any licensed pilot or deputy pilot from acting as a pilot or deputy pilot, for any period of time they may think proper: and further, that the said board of master and wardens shall have full power and authority, from time to time, to make and establish rules, orders, and regulations, not inconsistent with the constitution and laws of this state, or of the United States, for the better government of the said pilots

To license pilots.

To license deputy pilots.

May revoke licenses.

May suspend licenses.

May make regulations, &c. with fines.

May revoke licenses.

Majority of board may decide.

Proviso. Pilots not deprived without notice to appear.

Cause to be entered on minutes.

Proviso. Persons now pilots may continue such.

and deputy pilots, and with such fines and penalties for the breach thereof, as the said board of master and wardens shall deem proper, and the same from time to time to revoke or amend: and the said board of master and wardens may, moreover, by their order, absolutely revoke the license of any pilot or deputy pilot, or suspend him from acting as a pilot, for such time as they may think proper, for breaking any such rule, order, or regulation, or omitting any thing required by the same, or for acting in any manner contrary thereto: and in all cases whatever, a majority of the said board of master and wardens shall be sufficient to decide upon any matter or question before the said board, and the decisions, acts, orders, and proceedings of such majority, shall in all cases be as valid, binding, and effectual to all intents and purposes as if the said master and wardens had all of them been present and concerned therein; *Provided*, that before any pilot or deputy pilot shall be deprived of his license, or suspended from acting thereunder, such pilot or deputy pilot shall be summoned by a notice in writing, to be delivered to him personally, or to be left at his usual place of abode, at least fifteen days before the time specified therein for his appearance, to appear before the said board of master and wardens, at such time as shall be specified in the said notice, to show cause, if any he may have, against his suspension or the revocation of his license; and if such pilot or deputy pilot shall neglect or refuse to appear at the time specified in such notice, before the said board, or if the cause shown by such pilot or deputy pilot against his suspension or the revocation of his license, shall not appear sufficient and satisfactory to the said board, it shall and may be lawful for the said board, either to revoke the license of such pilot or deputy pilot, or to suspend him from acting as a pilot or deputy pilot, as they may judge proper, and an entry shall thereupon be made in the minutes of the said board of master and wardens, of such revocation or suspension with the causes and reasons thereof; *And provided also*, that the several persons who now are pilots and deputy pilots of the port of Mobile, may, respectively, continue in such their respective employments, without any such licenses as aforesaid, for the space of sixty days from the passing of this act, and no longer.

Wardens to examine persons applying for license.

Persons qualified may be licensed.

SEC. 5. *And be it further enacted*, That it shall be the duty of said board of master and wardens, before they grant a license to any person applying therefor, to act as pilot or deputy pilot for the port of Mobile, to call such applicant before them, and to examine, or cause him to be examined, touching his qualifications for such an employment, and in particular touching his knowledge of the tides, soundings, bearings, and distances of the several shoals, bars, and points of land, in the navigation for which he applies for a license to act as a pilot or deputy pilot; and touching any other matter the said board of master and wardens may think proper: and if upon such examination the person so applying shall be found and appear to the board of master and wardens, or a majority of them, to be of sufficient

Licenses to be under seal of the board, —and continue till revoked. Proviso.

ability, skill, and experience to act as a pilot or deputy pilot, as the case may be, and not otherwise, the said board of master and wardens, or a majority of them, may grant him a license for piloting vessels to and from the port of Mobile; all such licenses to be granted by the said board of master and wardens to persons to act as pilot or deputy pilot, shall be under the seal of the said board of master and wardens, and shall be signed by the master, or in case of his death, absence, or inability to act, by one of the wardens, and shall be attested by the clerk of the said board of master and wardens, or the person acting as clerk for the time being; and which license shall be in force, unless revoked, (and except during the suspension of the pilot or deputy pilot, acting under the same when suspended,) from the time of granting thereof, until the same shall be revoked by the master and wardens as aforesaid: *Provided*, that it may be lawful for the clerk to use his private seal as the seal of the board of master and wardens, until the said board obtain a seal.

Harbour-master may regulate shipping, &c. Penalty for opposing his authority. Such forfeiture to be paid to the treasurer of the city.

SEC. 6. *And be it further enacted*, That the said harbour-master shall have authority to regulate and station all ships and vessels in the bay and harbour of Mobile, within the limits of the said corporation, and at the wharves thereof, and remove from time to time such ships and vessels as are not employed in receiving or discharging their cargoes, to make room for such others as require to be more immediately accommodated, for the purpose of receiving and discharging their cargoes; and as to the fact of their being fairly and *bona fide* employed in receiving or discharging their cargoes, the said harbour-master is hereby constituted the sole judge; and the said harbour-master shall have authority to determine how far, and in what instances it is the duty of masters and others having charge of ships and vessels, to accommodate each other in their respective situations; and if any master or other person shall resist or oppose the said harbour-master in the execution of the duties of his office, such master or other person having charge of any ship or vessel, or other person whatsoever, shall for every such offence forfeit and pay the sum of fifty dollars, to be recovered with costs of suit in the name of the master and wardens of the port of Mobile, before any court having cognizance thereof; all of which fines when collected shall be paid to the treasurer of the city of Mobile, for the use of the poor of the county of Mobile.

In relation to nuisances.

SEC. 7. *And be it further enacted*, That it shall be the duty of the said harbour-master and wardens to superintend and enforce all laws of this state and all laws of the city of Mobile, for preventing and removing all nuisances whatever in and upon the wharves, within the corporate limits of said city.

Wardens may order pilots to their stations. Penalty for pilots refusing.

SEC. 8. *And be it further enacted*, That the said harbour-master shall have power to order any pilot or deputy pilot whom he may find in the city of Mobile to return to his station at Mobile-point; and any pilot or deputy pilot refusing to comply with the said order, or who shall evade the same, or shall refuse or neglect to perform any of the duties herein before imposed upon him, shall, on due proof thereof made to the said master and wardens of the said port, be subject to a fine not exceeding fifty dollars, to be recovered with costs of suit, before any court having cognizance thereof, in the name of the harbour-master and wardens of the port of Mobile, or to be suspended for any definite time from acting as pilot, as the case may be, or to have his license taken from him as pilot or deputy pilot, as in the judgment of the master and wardens may seem proper.

Harbour-master appoint a deputy.

—his compensation.

Proviso.

Harbour-master to adjust differences.

Sec. 9. *And be it further enacted*, That the said harbour-master, in case of sickness or temporary absence, shall have power to appoint a deputy, and the same to remove or displace, and appoint another in his room; and further, the said harbour-master shall have power to demand and receive from the commander, owners, or consignees, or either of them, of every ship or vessel that may enter the port of Mobile and load, unload, or make fast to any of the wharves within the limits of said city, at and after the rate of three cents per ton; to be computed from the tonage expressed in the registers of such ships or vessels, respectively, and no more: *Provided always*, that the sums shall not extend to chalons, flats, or keel-boats, which are employed in the river trade, unless upon the application of the person having charge of such chalon, flat, or keel-boat so employed: the said harbour-master shall interfere and adjust any difference respecting the situation or position of such flat or boat; which differences the harbour-master is authorized to hear and determine; in which case the said harbour-master may demand and recover in manner aforesaid, from the party in fault in the premises, the sum of two dollars for every difference so adjusted, and no more.

Pilotage, how collected.

5 pr. ct. detained.

Sec. 10. *And be it further enacted*, That the said harbour-master and wardens shall be empowered to receive all pilotage money which shall become due; and on neglect or refusal of payment by the person who ought to pay the same, may sue for and recover the same in the name of the said harbour-master and wardens, with costs, before any court having cognizance thereof; and the clerk of the said board of harbour-master and wardens shall keep a separate account with each pilot, of all moneys received to his use, and the amount so due to each pilot shall be paid to them respectively once in every three months, after deducting five per cent. for the trouble of the said harbour-master and wardens: and all fines and forfeitures arising under this act, except the forfeited recognizance of pilots and deputy pilots, shall be sued for and recovered as aforesaid by and in the name of the said harbour-master and wardens; and no such suit shall discontinue or abate, by the death, resignation, or removal from office, of the said harbour-master or wardens: and all such fines and forfeitures, and the sums recovered on any forfeited recognizance, and not applied in discharge of damages as herein after mentioned, shall be paid to the said master and wardens, and be by them applied towards defraying their necessary expenses arising in the execution of their trust.

Pilots shall enter into bonds.

SEC. 11. *And be it further enacted,* That every pilot or deputy pilot, hereafter to be appointed, before he takes upon himself the execution of his office, shall enter into a recognizance to the governor of this state, with two sufficient securities, to be approved by the harbour-master and wardens aforesaid, each pilot in the sum of one thousand dollars, and each deputy pilot in the sum of five hundred dollars, conditioned that he will diligently and faithfully execute the trust reposed in him as a pilot or deputy pilot (as the case may be,) according to the directions of this act, and such rules and orders as shall be given and made in pursuance thereof; and every such recognizance, if forfeited, may at the request of any person aggrieved, be prosecuted in any court of this state, having cognizance thereof, to judgment and execution, as in other cases; and the amount of such recognizance when recovered, shall, by an order of the court in which the same is recovered, be paid to the said harbour-master and wardens, and the said harbour-master and wardens, or any three of them, shall in such case, and also at any time after said writ brought on such recognizance, if requested by any party interested therein, examine into and ascertain the damages sustained by the persons so aggrieved, and shall apply the moneys so to be received, or as much as shall be requisite to pay the damages so ascertained, and shall make report in writing to the court in which such recovery shall be had, of the damages so ascertained and paid: *Provided, however,* that if the pilot or deputy pilot so offending, shall, before judgment is obtained on his recognizance as aforesaid, pay to the party aggrieved the damages so ascertained by the said harbour-master and wardens in manner aforesaid, together with costs of suit on such recognizance shall be discontinued.

Persons aggrieved may prosecute.

Amount received, how disposed of.

Proviso.

Survey of hatches, &c.

SEC. 12. *And be it further enacted,* That the said harbour-master and wardens, or any one of them, shall, if called upon by the person commanding any ship or vessel arriving from sea, inspect the manner in which the hatches of such ship or vessel were secured, previous to the opening thereof for the purpose of discharge, and shall be present at the opening of the same, and shall upon every such survey, certify under his hand how the said hatches appeared to him, for which certificate he shall be entitled to two dollars; and the said harbour-master and wardens, or any two of them, shall be surveyors of damaged goods brought into the port of Mobile in any ship or vessel, and, with the assistance of one or more skilful carpenters, shall be surveyors of any damaged vessel deemed unfit to proceed to sea; and they shall upon every such survey, certify under their hands, how the vessel or vessels so surveyed appeared to them, and shall cause entries to be made in a book to be kept for that purpose in their office, and for each certificate and entry they shall be entitled to two dollars, and for every duplicate thereof one dollar; and the said wardens shall seve-

Damaged goods.

Vessels unfit for sea.

rally be entitled for their services as surveyors of damaged goods or vessels, at the rate of two dollars and fifty cents per day, and further, it shall solely belong to the said master and wardens, or any two of them, to order and direct the sale of damaged goods by public auction, giving notice of such public sale, at least two days before such sale is to take place, in some newspaper published in the city of Mobile; and at least two of the said wardens shall be present at such public sale, and shall certify to the truth of the account of sales of the auctioneer by whom such damaged goods shall be sold; and for such attendance and certificate, shall be entitled to the sum of ten dollars.

Sale of damaged goods.

Account of sales.

SEC. 13. *And be it further enacted*, That neither the harbour-master nor wardens aforesaid shall be concerned directly or indirectly in any pilot-boat or with any pilot in respect to the business of his trust.

Wardens shall not be concerned in pilot-boats.

SEC. 14. *And be it further enacted*, That the said harbour-master and wardens shall furnish every pilot aforesaid with printed instructions in English, to be shown by such pilot to the master or commander of every vessel, as soon as he shall go on board to take charge of such vessel to pilot her into the bay and harbour of Mobile.

Pilots' instructions.

SEC. 15. *And be it further enacted*, That from and after the first day every branch pilot of the bay and harbour of Mobile, shall be owner or part owner of a pilot-boat of no less than twenty-two feet keel, and seven feet and a half beam, and to row not less than twelve oars, and shall keep such boat exclusively employed as a pilot-boat; and every such branch pilot not owning or employing a pilot-boat as aforesaid shall forfeit his office, and in the meantime shall be suspended as aforesaid by any three of the master and wardens aforesaid.

Pilot shall be owner, &c. pilot-boat.

SEC. 16. *And be it further enacted*, That the master or owners of any ship or vessel, appearing in distress, and in want of a pilot, on the coast, shall pay unto such branch or deputy pilot, who shall have exerted himself for the preservation of such ship or vessel, such sum for extra services, as the said master or owner and pilot can agree upon; and in case no such agreement can be made, the master and wardens aforesaid, or any three of them, shall determine what is a reasonable reward; and the sum so determined by them shall be collected in the manner by this act directed for the collection of pilotage.

Pilots paid for extra services.

SEC. 17. *And be it further enacted*, That if the master of any ship or vessel coming into the bay of Mobile, and being without the bar, shall refuse to receive on board and employ a pilot, the master or owner of such ship or vessel shall pay to such pilot, who shall have offered to go on board and take charge of the pilotage of such vessel, half pilotage.

Half pilotage in certain cases.

SEC. 18. *And be it further enacted*, That if any vessel going out of the bay of Mobile shall carry off to sea through the default of the master or owner of such vessel, any pilot or deputy pilot when a boat is attending to receive such pilot or deputy

Penalty for carrying a pilot to sea.

pilot from on board such vessel, the master or owner of such vessel shall pay to the master and wardens of the port of Mobile, besides the pilotage of such vessel, the like wages per month, until he shall return to the port of Mobile, as the monthly wages to the mate of such vessel; *Provided*, that such pilot or deputy pilot shall have performed the duties required of him by this act; and if any money shall have been paid to such pilot by the master or owner or factor of such vessel, the same shall be deducted from the moneys to be paid to the master and wardens, for the use of such pilots.

Proviso.

Pilots shall receive pilotage in certain cases.

Sec. 19. *And be it further enacted*, That it shall be lawful for every pilot or deputy pilot aforesaid, to ask and receive pilotage from any person who shall employ him to pilot any ship or vessel from sea, to within the bars at the mouth of the bay of Mobile, and shall, if required, there safely moor such vessel, and likewise from every person who shall employ him to pilot any ship or vessel from within the bay of Mobile to the eastward and southward of the said bars, so far that such vessel may safely proceed to sea, at the rate of two dollars for every foot of water such ship or vessel shall draw.

Rate of pilotage.

Pilots detained on board may demand 2 dols. per day.

Sec. 20. *And be it further enacted*, That for every day which any pilot aforesaid shall be required to remain or be detained on board any ship or vessel by the master thereof, waiting for a fair wind or otherwise, he may demand and receive the sum of two dollars; *Provided, however*, that nothing shall be demanded or received from the master or owner of any vessel employed between the port of Mobile and any other port in this state, for refusing to receive and employ such pilot.

Proviso.

Packets to and from N. Orleans exempt.

Sec. 21. *And be it further enacted*, That nothing in this act contained shall be construed to apply to the regular packets and traders between Mobile and New-Orleans.

Penalty on persons not licensed for acting as a pilot.

Sec. 22. *And be it further enacted*, That if any person not appointed as a pilot or deputy pilot as aforesaid, shall pilot any ship or vessel, either into or out of the bay or harbour of Mobile, he shall forfeit and pay the sum of twenty-five dollars; unless such ship or vessel be in distress, or no regular pilot can be had.

Repeal.

Sec. 23. *And be it further enacted*, That all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed: *Provided, however*, that no port-warden elected or appointed as aforesaid, shall, either directly or indirectly, act as auctioneer in the sale of damaged goods, condemned by the provisions of this act.

Proviso. Port-wardens restricted.

CHAPTER XV.

Resolutions instructing our Senators and requesting our Representative in Congress, to procure the Passage of a Law imposing a tonnage Duty on all Vessels coming into the Ports of Mobile and Blakeley.—*Passed December* 31, 1822.

Resolved by the Senate and House of Representatives of the State of Alabama, in general assembly convened, That our senators in congress be instructed, and our representative requested, to use their best exertions to get a law passed laying a tonnage on all vessels coming into the ports of Mobile and Blakeley, for the benefit of sick and disabled seamen, and such as are now in force in the ports of Charleston and Savannah.

And be it further resolved, That his excellency the governor be requested to forward a copy of the foregoing resolution to each of our senators and our representative in congress.

VAGRANTS.—1801.

CHAPTER I.

An Act to Restrain Idle and Disorderly Persons.—*Passed December 5, 1801.*

Whereas it becomes necessary to suppress all wandering, disorderly, and idle persons:

Justice may apprehend vagrants.

SEC. 1. *Be it therefore enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened,* That every person, whether male or female, who has no apparent means of subsistence, shall apply himself to some honest calling for his support; and if any person shall neglect so to do, or shall be found sauntering about, and endeavouring to maintain himself by gambling, or other undue means, it shall and may be lawful for any justice of the peace of the county wherein such person may be found, on due proof made, to issue his warrant for such offending person, and cause him to be brought before such justice, who is hereby empowered, on conviction, to demand security for his good behaviour; and in case of refusal or neglect, to commit him to the jail of the county, for any term not exceeding ten days, at the expiration of which time, he shall be set at liberty, if nothing criminal appears against him; the said offender paying all charges arising from such imprisonment. And if such person shall be guilty of the like offence from and after the space of twenty days, he or she, so offending, shall be deemed a vagrant, and be subject to one month's imprisonment, with all costs accruing thereon; which if he or she neglect or refuse to pay, he or she may be continued in prison until the next county court; which may proceed to try the offender, and if found guilty by the verdict of a jury of good and lawful men, the said court may proceed to hire the offender for any term not exceeding six months, to make satisfaction for all costs; but if such person so offending be of noted ill fame, so that he or she cannot be hired for the costs, nor give sufficient security for the same, and his or her good behaviour, in that case it shall and may be lawful for the said court to cause the offender to receive not exceeding thirty-nine lashes, on his or her bare back; after which, he or she shall be set at liberty, and the costs thereon accruing shall become a county charge; which punishment may be inflicted as often as the prisoner may be guilty, allowing twenty days between the punishment and the offence.

Housekeepers not to harbour suspicious persons.

Sec. 2. *And be it further enacted*, That it shall not be lawful for any housekeeper within this territory to harbour or entertain any idle person of a suspicious character knowingly, for any longer time than twenty-four hours, under the penalty of ten dollars for every such offence, to be recovered by warrant, before any justice of the peace of the county where the offence shall be committed.

Sec. 3. *And be it further enacted*, That all fines inflicted by this act, shall be paid, the one half to the informer, and the other half to the use of the county.

CHAPTER II.

Extract from "An Act to Prevent the Evil Practice of Gaming."—*Passed February* 4, 1807.

Vagrants under this act.

Sec. 3. *And be it further enacted*, That all and every keeper, or keepers, or exhibitor, or exhibitors of either of the gaming tables commonly called A B C, or E O, or any other table, distinguished and known by any other letter, or by figure, or billiard table, or rowley-powley table, or rouge-and-noir, or of a faro-bank, or of any other gaming table, or bank, of the same or like kind, under any other denomination whatever, shall be deemed and rated as vagrants; and moreover it shall and may be lawful for any justice of the peace, or of the quorum, and they are hereby required by warrant, under his or their hands, to order any such gaming table to be seized and publicly burnt or destroyed.

WEIGHTS AND MEASURES.—1807.

CHAPTER I.

An Act establishing Weights and Measures in the Mississippi Territory.—*Passed February* 4, 1807.

Treasurer to procure a general standard.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the treasurer of the territory be, and he is hereby authorized and required to procure as soon as may be, at the public expense, one set of weights and measures, viz. one weight of fifty pounds, one of twenty-five, one of fourteen, two of six, two of four, two of two, and two of one pound avoirdupois weight, according to the standard of the United States, if one be established, but if there be none such, according to the standard of London, with proper scales for weights, together with measures, one of the length of one foot, and one of one yard cloth measure, and the measures of one half bushel, one peck, and one half peck dry measure, also the measures of one gallon, one of half a gallon, one of one quart, one of one pint, one of half a pint, and one of one gill, wine measure, according to the above-named standard; and the said weights, measures, and scales, shall be deposited with the said treasurer to serve as a general standard for weights and measures within this territory, until otherwise directed by Congress.

County standards.

SEC. 3. *And be it further enacted*, That when the aforesaid weights, measures, and scales, shall be provided as aforesaid, the treasurer shall cause to be made or procured for each county within this territory, at the public expense, one set of scales, weights, and measures, and the last-mentioned weights and measures shall be compared by the said treasurer, with the aforesaid general standard, and when found to agree therewith, shall be forthwith transmitted by him to the clerks of the several county courts in this territory.

SEC. 3. *And be it further enacted*, That the said weights, measures, and scales, shall be kept by such person in each county, as the county court shall direct, who shall take the following oath, viz.: "I, A. B. do solemnly swear, or affirm, as the case may be, that I will in all things act with justice and faithfulness in my appointment as keeper of the standard of weights and measures for the county of ————, according to law, to the best of my skill and judgment: So help me God." And immediately after such appointment, the clerks of the several county courts shall make known the same by advertisement, to be fixed at the door of the court-house, and also by inserting the same in one of the public gazettes of this territory. And all persons desirous of trying their weights and measures, may resort to the aforesaid county standard for that purpose, and if they are found true, the persons appointed to keep the said standard, shall seal them with a seal, to be provided by the county court at the expense of the county; and the persons appointed in the several counties to keep the said county standard, shall be entitled to receive for trying every steelyard, and giving certificate therefor, and for trying any other weights and measures, and sealing the same, fifty cents each, to be paid by the person for whom such service is rendered or done.

Penalty for selling with false weights.

SEC. 4. *And be it further enacted*, That three months after the appointment of a person to keep the said county standard shall have been made as aforesaid, every person or persons who shall sell any commodity whatever, by weight or measure, that shall not correspond with the said county standard, or shall keep any such for the purpose of buying or selling with, shall for every such offence forfeit and pay the sum of ten dollars: recoverable before any justice of the peace, by any person who will sue for the same, and applied to his own use.

SEC. 5. *And be it further enacted*, That the territorial treasurer shall transmit to the clerks of the respective counties, the weights, scales, and measures, as directed by the second section of this act, within twelve months from and after the passing hereof.

CHAPTER II.

An Act concerning Weights and Measures.—*Passed December* 23, 1815.

Weights and Measures.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the treasurer of the territory be, and he is hereby authorized and required, to procure as soon as may be, at the public expense, six sets of weights and measures, as described in the act entitled "An Act establishing Weights and Measures in the Mississippi Territory," passed February 4, 1807.

Places where to be sent and kept.

SEC. 2. *And be it further enacted*, That when the sets of weights, measures, and scales shall have been procured by the treasurer as authorized by this act, one set shall be conveyed at the public expense to Huntsville in Madison county; one other set to some place on or near Pearl river; one other set to the town of St. Stephens; one other set to the town of Mobile; one other set to the town of Woodville; and the sixth set to the town of Port Gibson, and be placed in the hands of some person to be appointed by the governor; and the sets of weights and measures heretofore procured, shall be forthwith delivered to some person residing in the city of Natchez, to be appointed in the manner above described. And the keepers of weights and measures, hereby authorized to be appointed, shall previously to entering upon the discharge of their duties, take the oath or affirmation prescribed in the third section of the act above recited, and the said keepers shall immediately after their appointment make known the same by advertisement to be fixed at the door of the court-house of the counties in which they reside, and also by inserting the same in the nearest newspaper published in this territory. And immediately after the appointment of the said keepers, all persons residing in any part of this territory, and desirous to try their weights and measures, may resort to any of the aforesaid standards for that purpose; and if they are found true, the keeper of any of the said standards shall seal them with a seal, to be procured by the said treasurer at the expense of the territory; and the persons appointed keepers as aforesaid shall be entitled to receive the fees prescribed by the third section of the act above recited, for the services therein specified.

Keepers to take an oath.

Their compensation.

SEC. 3. *And be it further enacted*, That three months after public notice of the appointment of a person to keep the said standard in the city of Natchez, every person residing in any of the counties lying upon the Mississippi river, and that three months after public notice of the appointment of the other keepers of weights and measures, hereby authorized to be made, every person residing in this territory, who shall sell any commodity whatever by weight or measure, that shall not correspond with the standard hereby established, shall for every such offence forfeit and pay the sum of fifty dollars, recoverable before any justice of the quorum or of the peace, to be paid to the county treasurer for county purposes.

CHAPTER III.

An Act to amend "An Act, passed December 23, 1815, Fixing a Standard for Measures.—*Passed December* 16, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened,* That the clerks of the county courts of each county in this state, shall immediately after the passage of this act, procure from Huntsville, St. Stephens, or Mobile, one set of measures, according to the standard of measures provided for in the Mississippi Territory, and the same shall be the lawful measures of the state of Alabama, that is to say: one half bushel, one peck, and one half peck dry measure; to be made of good and durable wood: also one set of liquid measures, that is to say: one of a gallon, one of a half gallon, one quart, one pint, one half pint, and one gill, to be made of tin, pewter, or copper, which said measures shall be deposited in the clerk's office in each county, and kept by said clerks.

Clerks of county courts shall procure standards.

SEC. 2. *And be it further enacted,* That after the above-named measures are procured, the clerk of each county court, as aforesaid, shall make known the same, by advertisement at the door of his respective court-house, or place of holding court. And all persons, who shall hereafter keep measures for the purpose of selling by said measures, shall present all such measures to the clerk, who shall examine the same, and on finding them to agree with the measures herein directed to be procured, shall stamp or brand the same with the initials A. S. And the said clerk may claim and receive twelve and a half cents for each measure so branded or stamped: *Provided,* nothing in this act shall be so construed as to operate on any measure or weight heretofore tried by said standard of weights and measures, and stamped under the laws of the Alabama Territory.

Which shall be advertised.

Clerks to examine measures.

SEC. 3. *And be it further enacted,* That from and after the first day of June next, if any person within this state shall sell by any other measures than those pointed out by this act, he or she shall for every such offence pay the sum of ten dollars, to be recovered before any justice of the peace in the county where such offence may be committed; and the sum so recovered shall be paid over to the person suing for the same.

Penalty for selling by any other measures.

SEC. 4. *And be it further enacted,* That the clerks of the several county courts are hereby made the keepers of the measures herein named; and before they or either of them enter on the duties of that office, they shall take and subscribe the following oath, to be administered by any justice of the peace of said county: "I, ———— ————, do solemnly swear, that I will in all things act with justice and faithfulness in my appointment as keeper of the measures for said county, according to law, and to the best of my skill and judgment: So help me God."

Clerk's oath.

SEC. 5. *And be it further enacted,* That all expenses that may be incurred in procuring said measures, for the several counties in this state, shall be paid by the treasurer of the county, to the

Expenses to be paid by county treasurer.

clerk for procuring the same. And this act shall continue in force until altered by the state, or until the United States shall pass a law fixing a standard for measures.

WILLS.—1787.

CHAPTER I.

Extracts from an Ordinance for the Government of the Territory of the United States, Northwest of the River Ohio.—*Passed July* 13, 1787.

Be it ordained by the United States, in Congress assembled, That the said territory, for the purposes of temporary government, be one district; subject however to be divided into two districts; as future circumstances may, in the opinion of congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grandchild, to take the share of their deceased parent in equal parts among them: and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate, shall have in equal parts among them their deceased parent's share; and there shall in no case be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as herein after mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after, proper magistrates, courts, and registers shall be appointed for that purpose, and personal property may be transferred by delivery.

CHAPTER II.

An Act concerning Wills and Testaments: the Settlement of Intestates' Estates; and the Duty of Executors, Administrators, and Guardians.—*Passed February* 10, 1806.

County justices to hold an orphans' court.

To take probate of wills, &c.

*Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That the justices of the county court of each county in this territory shall, during the time of their holding such county court, hold and keep a court of record, to be styled and called "The Orphans' Court of the said County," for taking the probate of wills, and granting letters of administration on the estates of persons deceased, being inhabitants of, or resident in the same county, at the time of their decease, for appointing guardians to minors, idiots, lunatics, and persons *non compos mentis*, for examining and allowing the accounts of executors, administrators, or guardians; with full jurisdiction of all testamentary and other matters pertaining to an orphans' court or court of probate, in their respective counties.

How freeholds are to be devised.

Sec. 2. *And be it further enacted*, That every person of the age of twenty-one years, of sound mind, lawfully seized of any lands, tenements, or hereditaments, within this territory, in his or her own right, in fee simple, or for the life or lives of any other person or persons, shall have power to give, devise, and dispose of the same, by last will and testament in writing: *Provided*, that such last will and testament be signed by the testator or testatrix, or by some person in his or her presence, and by his or her direction; and attested by three or more respectable witnesses, subscribing their names thereto, in the presence of such devisor; saving, however, to the widows of testators, their dower in lands, tenements, or hereditaments so devised.

Nuncupative wills regulated.

Sec. 3. *And be it further enacted*, That no nuncupative will shall be established, unless it be made in the time of the last sickness of the deceased, at his or her habitation, or where he or she had resided for the space of ten days or more next preceding the time of making such will, except such person be taken sick from home and die before his or her return to such habitation; nor when the value bequeathed exceeds one hundred dollars; unless it be proved that the testator called on the persons present at the time of making such will, or some of them, to take notice, or bear testimony, that such was his or her will, or to that effect.

Probate of nuncupative wills, how granted.

Sec. 4. *And be it further enacted*, That no probate of any nuncupative will shall be taken, or letters testamentary granted thereon, till after the expiration of fourteen days from the time of the decease of the testator, nor till citation hath issued to call in the widow and other person or persons principally concerned, if resident in this territory, that they may appear and contest such will, if they see cause.

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* This act is copied from the Digest of 1807, but it is for the most part substantially the same act which was originally passed on March 12, 1803. Some provisions relating to the power of the County Courts in Testamentary Cases, will be found under title "Inferior Courts," Chap. 1, Sections 13 and 14.

What shall be a nuncupative will.

SEC. 5. *And be it further enacted*, That after the expiration of six months from the time of speaking any pretended testamentary words, no testimony shall be received, to prove the same to be a nuncupative will, unless such words or the substance thereof, were reduced to writing within six days after speaking the same.

Revocation of wills to be written, soldiers and sailors excepted.

SEC. 6. *And be it further enacted*, That no will in writing, or bequest therein of goods and chattels, shall be revoked by any subsequent will, codicil, or declaration, unless the same be in writing: *Provided always*, that any soldier in actual military service, or mariner, or seaman, being at sea, may dispose of, and bequeath his goods and chattels, as he could have done before the passing of this act: any thing herein contained to the contrary notwithstanding.

Posthumous children provided for.

SEC. 7. *And be it further enacted*, That when any child shall be born after the death of the father, without having any provision made in his will; every such posthumous child shall have the same share of the estate of his or her father, that such child would have had, if the father had died intestate; and such share shall be assigned to him or her accordingly; to be taken in proportion from the legatees and devisees of such will.

Residue of bequests disposed of.

SEC. 8. *And be it further enacted*, That all such estate, both real and personal, as is not devised or bequeathed in the last will and testament of any person, shall be distributed in the same manner as the estate of an intestate, and the executor or executors shall administer the same accordingly.

Attesting legatees not to be admitted.

SEC. 9. *And be it further enacted*, That if any person shall be a subscribing witness to a will, wherein any devise or bequest is made to such subscribing witness, and the will cannot be otherwise proved, the devise or bequest to such witness shall be void, and he or she compellable to appear and give testimony on the residue of the will in like manner as if no such devise or bequest had been made. But if such witness would have been entitled to any share of the testator's estate, in case the will was not established, then so much of such share shall be saved to such witness as shall not exceed the value of the said devise and bequest made to him or her in the said will.

Attesting creditors admitted.

SEC. 10. *And be it further enacted*, That if lands, tenements, or hereditaments shall be charged with any debt or debts, by any will or codicil, and the creditor, whose debt is so secured, shall attest the execution of such will or codicil; such creditor may notwithstanding be admitted as witness of the execution thereof.

Widow may choose between legacy and dower.

SEC. 11. *And be it further enacted*, That the widow may in all cases waive the provision made for her in the will of her deceased husband, and claim her dower, which shall be assigned her accordingly; in which case she shall receive no part of such provision, unless it appears plainly by the will that the testator intended it in addition to her dower.

SEC. 12. *And be it further enacted*, That if any testator shall have a mansion-house, or known place of residence, his will shall be proved in the orphans' court of the county wherein such mansion-house or place of residence may be; but if he has no place of residence, and lands be devised in the will, it shall be proved in the county wherein the lands so devised are situate; or in one of them where there shall be lands so devised in several counties; and if he has no such known place of residence, and there be no lands devised, then the will may be proved either in the orphans' court of the county where the testator shall die, or that wherein his estate or the greater part thereof shall be.*

In what county probate shall be granted.

SEC. 13. *And be it further enacted*, That when the subscribing witnesses to any will shall reside out of this territory, the court to which the probate of the said will may appertain are authorized to issue a *dedimus potestatum*, to take the testimony of such witnesses in proof of said will, and receive the testimony so taken accordingly.

Dedimus directed to witness out of the territory.

SEC. 14. *And be it further enacted*, That authenticated copies of wills, proved according to the laws of any of the United States, or of any country out of the limits of the United States, and touching or concerning estates within this territory, may be offered for and admitted to probate in the said courts; but such will shall be liable to be contested and controverted in the same manner as the original might have been.

Foreign wills, how to be proved.

SEC. 15. *And be it further enacted*, That if the court having jurisdiction as aforesaid shall be informed that any person hath the last will and testament of a testator, such court is hereby authorized to compel such person, by proper process, to produce the same; and all original wills after probate thereof shall be recorded, and remain in the register's office of the court wherein they are respectively proved, except during such time as they may be in the supreme court, or superior court of the district of Washington, having been removed thither for inspection by *certiorari* or otherwise, after which they shall be returned into the said office.†

Secreted wills to be produced, &c.

SEC. 16. *And be it further enacted*, That when any person shall die seized of any estate or inheritance in lands, tenements, or hereditaments not devised, the same shall descend to his or her children, and their descendants, in equal parts; the descendants of the deceased child or grandchild to take the share of their deceased parent, in equal parts among them; and when there shall be no children of the intestate, nor descendants of such children, then to the brothers and sisters of the intestate, and their descendants, in equal parts; the descendants of a brother or sister of the intestate to have in equal parts among them, their deceased parent's share; and where there shall be no children or descendants of them or any of them,‡ then to the

Lands of an intestate, how to descend.

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* See act of 1821, (under this title,) chap. 3, sec. 7.

† See chapter 3 of this title, section 10.

‡ *Query.*—Should not the following be inserted in this place? "*And no brothers or sisters, or descendants of them or any of them.*"—It is not in the manuscript, nor in Turner's Digest.—H. H.

father if he be living, if not, to the mother of the intestate; and if there be no children of the intestate, or descendants of such children, and no brothers or sisters, or descendants of them, nor father or mother, then such estate shall descend in equal parts to the next of kin to the intestate, in equal degree, computing by the rules of the civil law; and there shall be no representation among collaterals, except with the descendants of the brothers and sisters of the intestate; and there shall in no case be a distinction between the kindred of the whole and half blood, except the kindred of the whole blood in equal degree shall be preferred to the kindred of the half blood in the same degree; saving to the widow of the intestate in all cases her dower. And where there shall be no children of such intestate, nor descendants of them, then the widow shall have as her dower, one half of such before-mentioned estate of her deceased husband.

Of the widow's dower when the estate is insolvent.

SEC. 17. *And be it further enacted*, That when the estate of any testator or intestate shall be represented insolvent, and shall not be sufficient, both real and personal, to pay the just debts, the widow of such testator or intestate shall, though there be no children or descendants to them of such testator or intestate, be endowed with one-third only of the lands, tenements, and hereditaments of her deceased husband, any thing in this act to the contrary notwithstanding.

Children before marriage, legitimate.

SEC. 18. *And be it further enacted*, That where a man, having by a woman a child or children, shall afterward intermarry with such woman, such child or children, if recognized by him, shall be thereby legitimated.

Courts to grant administration on the goods of intestates.

SEC. 19. *And be it further enacted*, That the granting of letters of administration, of the estate of any intestate, and the hearing and determining the right of the same, shall pertain to the orphans' court of the county, in which the intestate had at the time of his or her death, a mansion-house, or known place of residence. And if he or she shall have no such known place of residence; then to the orphans' court of the county where the intestate shall die, or of that wherein his or her estate, or the greater part thereof shall be; and the court taking the probate of any will, or granting letters of administration, and the executors or administrators thereby authorized, shall have the same jurisdiction, power, and authority in and over the decedent's estate in any part of this territory, as if it were situate in the proper county of such orphans' court.

[Sections 20 to 43 inclusive, are inserted under title "Executors and Administrators," and sections 44 to 53 inclusive, under title "Guardians."]

Executors may sell by direction of a will.

SEC. 54. The sale and conveyance of lands, tenements, and hereditaments directed or devised to be sold by any last will and testament, shall and may be made by the executors, or such of them as undertake the execution of the will; if no other person be therein appointed for that purpose; or if the person so appointed shall refuse to perform the trust, or die, before he shall have completed it.

SEC. 55. Within five years from the time of the first probate of any will, any person interested in such will, may by bill in chancery contest the validity of the same; and the court of chancery may thereupon direct an issue or issues in fact, to be tried by a jury as in other cases; and in all such trials, the certificate of the oath of the witnesses, at the time of taking the original probate, shall be admitted as evidence to the jury, to have such weight as they may think it deserves, but after the expiration of the said five years, the original probate of any will shall be conclusive, and binding on all parties concerned; saving however to infants, *femes covert*, persons *non compos mentis*, or absent from the territory; the like period of five years, from and after the removal of their respective disabilities.

A will may be disputed in chancery within five years,

and not afterward.

SEC. 56. If any person or persons shall be aggrieved by a definitive sentence, or judgment, or final decree of the said orphans' court; it shall be lawful for the party so aggrieved, to appeal therefrom to the next term of the supreme court in chancery, or in the district of Washington, to the superior court of the said district; and it shall be the duty of the orphans' court to allow such appeal, upon the appellant's giving bond, with good and sufficient security, approved of by the said court, and in such sum as they shall direct, to the chief justice thereof, conditioned that the appellant shall prosecute the said appeal to effect, and perform the sentence, judgment, or decree, which the said supreme or superior court shall make therein, in case the cause be decided against him or her; which bond may be put in suit in the name of the said chief justice; and the amount recovered thereon, applied as the said orphans' court shall direct, among those injured by breach of the condition thereof. And the said supreme or superior court may, at their discretion, on such appeal, direct an issue or issues, in fact, to be made up and tried, as in other cases; and the judgment, sentence, or decree, which the said court may render, on any such appeal, shall be certified to the orphans' court from which such appeal was made; and thereupon entered on the records of the said orphans' court, and made the judgment, sentence, or decree thereof.

Appeal from the orphans' court to chancery.

CHAPTER III.

Extracts from an Act entitled An Act to repeal in part and amend an Act, entitled "An Act to regulate the Proceedings in the Courts of Law and Equity in this State."—*Passed June* 14, 1821.

SEC. 7. *And be it further enacted*, That where any person may have died, having no known place of residence within any county of this state, his or her will may be proved, and letters testamentary, or of administration thereon granted, in the county where the lands devised, or any part thereof lie; or the will may be proved, and letters testamentary granted, or administration may be granted in any county where the goods and chattels, and debtors, or any part thereof of such testator or intestate may be.

When a will may be proved, or administration granted, in the case of non-residents.

Citations to issue on application for the probate of will, or for letters of administration.

SEC. 8. *And be it further enacted*, That on application for the probate of any will, or for letters of administration, the clerk shall issue a citation requiring the sheriff to summon the widow and next kindred of the deceased, to appear at some return day in said process named, (or appear at the next stated session) and show if they have any thing to allege against such application and subpœnas for such witnesses as the applicant may name on the return of such process, executed on the proper parties a reasonable time before the return day thereof, (allowing one day for every twenty miles he, she, or they may reside from the place of holding the court,) or on satisfactory proof that the deceased has no widow or kindred resident in the state, the application may be heard and determined: the court at any stated session may hear and determine such applications, though no citations may have been executed or issued, on proof of reasonable notice thereof, as aforesaid, or on proof that the deceased has no widow or kindred resident in the state.

Jury may be empannelled.

SEC. 9. *And be it further enacted*, That when the validity of any will shall be contested, or doubts may arise as to its validity, or as to any fact which in the opinion of the judge it may be necessary to have ascertained by the verdict of a jury, before awarding any order, judgment, or decree, such judge, at any stated session, or on any sitting held in vacation, according to the provisions of this act, may forthwith cause a jury to be summoned and empannelled to try such issues, or inquire of such facts as, under his direction, shall be submitted to their decision, and shall cause them to be sworn in such form as the case may require.

Citation to produce wills.

SEC. 10. *And be it further enacted*, That if any of said judges shall be informed that any will, whereof he is competent to take the probate, is in possession of any person, such judge may order a citation to issue, returnable as in other cases, requiring the person so charged, and all others who may have possession of such will, to produce the same before him, at or before the return day of such process; and on its being duly ascertained by proof that any person or persons on whom such process has been executed, conceals, or improperly delays to produce such will, such judge may commit him, her, or them to jail, to remain in custody until the will shall be produced, and may make such other orders as may seem necessary in the case.

CHAPTER IV.

An Act concerning Intestates' Estates.—*Passed December* 14, 1822.

Estate previously received, may be brought into hotchpotch.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in general assembly convened*, That when any of the children of a person dying intestate, shall have received from such intestate in his or her lifetime, any real or personal estate by way of advancement, and shall choose to come into the partition of the estate with the other parceners, such advancement, both of real and personal estate, or the value thereof, shall be brought into hotchpotch with the whole estate real and personal descended; and such party bringing into hotchpotch such advancement as aforesaid, shall thereupon be entitled to his, her, or their portion of the whole estate so descended, both real and personal.

SEC. 2. *And be it further enacted*, That this act shall take effect from and after the first day of January next; and that all laws and parts of law, contravening the provision of this act, be, and the same are hereby repealed. Commencement.

WITNESSES AND DEPOSITIONS.—1807.

CHAPTER I.

An Act concerning Witnesses.—*Passed February* 10, 1807.

NOTE.—This Act, in its present shape, is taken from the Digest of 1807, though the provisions therein had been generally enacted in the years 1802, 1803, and 1805.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That for taking the testimony of witnesses in all causes which may be depending in any of the courts of this territory, the following rules shall be observed and put in practice, to wit: In all suits where witnesses are to appear at any of the said courts, the clerk, at the request of the party, shall issue a subpœna, directed to the sheriff or other officer of the county where such witness or witnesses are said to reside, mentioning the time and place for his, her, or their appearance, the names of the parties to the suit wherein the testimony is to be given, and the party at whose instance such witness or witnesses is or are summoned. Mode of summoning witnesses.

Every subpœna made returnable immediately, shall be issued only in term time, and shall be personally served on the witness, or witnesses therein named.

A copy of every subpœna issued by the clerk in the vacation, in case the witness or witnesses therein named, is or are not to be found, may be left at their usual places of residence; and such copy, certified by the sheriff or other officer, left as aforesaid, shall be deemed a legal summons; and the person or persons therein named shall be bound to appear in the same manner as if personally summoned.

SEC. 2. *And be it further enacted*, That every witness being summoned to appear at any of the said courts, in manner as herein before directed, shall appear accordingly, and continue to attend from term to term, until discharged by the court, or the party at whose instance such witness shall be summoned; and if it shall so happen, that the suit so depending shall in the vacation be accommodated, and settled by the parties, and the Duty of attendance.

party at whose instance such witness was summoned shall neglect or omit to discharge him or her from further attendance, and he or she for want of such discharge shall attend at the next term, then and in that case, the witness, upon oath made of the facts, shall be entitled to a ticket from the clerk, in the same manner as other witnesses, and shall receive from the party at whose instance he was summoned, the same allowance which by this act is given to witnesses for their attendance at the said court, with costs.

Penalty for not attending.

SEC. 3. *And be it further enacted*, That if any person duly summoned as a witness, shall fail to appear and attend as herein required, he shall pay to the party at whose instance the subpœna issued, the sum of one hundred dollars, to be recovered by *scire facias*, with costs; and shall be further liable to the action of such party for the full damages which may be sustained for want of such witness's testimony: *Provided always*, That if sufficient cause be shown by the person so summoned and failing to appear, of his or her incapacity to attend at the time and place mentioned in the subpœna, then no forfeiture or penalty shall be incurred by such failure.

SEC. 4. *And be it further enacted*, That every witness being summoned to appear in any of said courts on a criminal prosecution, or plea of the territory, shall appear accordingly, and continue to attend from day to day, until discharged by the court, the attorney for the territory, or the party at whose instance he shall be summoned: and in default thereof shall forfeit and pay the sum of one hundred dollars, for the use of the territory, or the party summoning him, as the case may be: unless on or before the return of a *scire facias* made known, sufficient cause be shown for such failure.

SEC. 5. *And be it further enacted*, That if any person, who shall be summoned as a witness in any of the said courts, or before any person appointed to take depositions as aforesaid, shall refuse to give testimony on oath; such person so refusing, shall by the court, or by the commissioners, before whom he or she shall be summoned, be committed to the common prison; there to remain without bail or mainprize, until he or she shall be willing to give testimony in such manner as the law doth or may direct.

Privileges of witnesses.

SEC. 6. *And be it further enacted*, That during the attendance of any person summoned to attend as a witness in any court whatsoever, and during the time that such person is going to, and returning from the place of such attendance:) allowing one day for every twenty-five miles such witness has to travel from, and return to his place of residence; no sheriff or other officer shall serve or execute on any person so attending, going to, or returning from such court, any writ or process, warrant, order, judgment, or decree in any cause, (summons for witness excepted:) and if any such be executed, the service thereof shall be, and is hereby declared, null and void.

Compensation to witnesses.

SEC. 7. *And be it further enacted*, That for every mile any witness shall travel, either going to, or coming from the court to which such witness shall be summoned to appear, there shall be paid to him by the party, at whose instance the *subpœna* shall have issued, four cents per mile, together with the necessary ferriages: and one dollar per day for every day he shall attend, until he shall have given testimony, or shall be discharged: *Provided*, That in any bill of costs, there shall not be allowed the charges of attendance of more than two witnesses, to any one matter of fact. And the attendance of the witness as to the number of days, shall be ascertained by the oath of the witnesses, to be made at the court at which the cause is determined, or within five days after, before the clerk of the said court, who shall grant certificates of the same, after the termination of the suit: *Provided also*, That if any witness shall hereafter swear falsely, in order to obtain a ticket, he shall, upon conviction, be adjudged guilty of perjury, and suffer as in cases of corrupt and wilful perjury.

SEC. 8. *And be it further enacted*, That all witnesses appearing in behalf of the territory in any criminal prosecution, shall be allowed the same compensation for their daily attendance as is allowed to witnesses attending upon civil prosecutions: and such fees for attendance, together with all costs of the prosecution, shall be paid by the defendant upon conviction. And if the territory shall fail upon the prosecution of any offence of an inferior nature, the court may, at their discretion, order the costs to be paid by the prosecutor, in case such prosecution shall appear to have been frivolous or malicious, and in case the defendant shall not be able to pay costs, or the court shall not think fit to order the prosecutor to pay the same, that then and in that case, the clerk of the court, wherein the matter may have been pending, shall grant a certificate of attendance for the witness of the territory, in manner as tickets are granted to jurors; and such tickets may be received by the sheriffs in payment of public dues.

SEC. 9. *And be it further enacted*, That all negroes, mulattoes, Indians, and all persons of mixed blood, descended from negro or Indian ancestors, to the third generation inclusive: though one ancestor of each generation may have been a white person, whether bond or free, shall be taken and deemed to be incapable in law to be witnesses in any case whatsoever, except for and against each other.*

SEC. 10. *And be it further enacted*, That the liberty of giving testimony, by way of solemn affirmation, shall be admitted in all cases whatsoever, criminal as well as civil.

Depositions of absent or infirm witnesses.

SEC. 11. *And be it further enacted*, That when a person, who may be a witness in any cause in any of the said courts, shall reside out of this territory, or shall, by reason of age or bodily infirmity, or any other cause, be incapable of attending, to give his or her testimony in court, oath thereof being made to any judge, justice, or clerk of the court, wherein such suit is depending, such judge, justice, or clerk is hereby empowered to issue or order the clerk of the court, wherein such cause is depending, to issue a commission to one or more persons, to take and receive the deposition of such witness; which being duly taken and returned, as herein after directed, shall be received as legal testimony: *Provided also*, that the party praying such commission shall give such notice to the adverse party of the time and place, when and where such commission is to be executed, as the court, judge, justice, or clerk shall think proper; and the adverse party shall have liberty to cross examine any witness whose deposition shall be so taken.

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* That John Randon, James Randon, William Hollinger, George Higgins, and Mary Dyer and their descendants are exempted from the operation of this provision, (first contained in the 32d section of an act passed in the year eighteen hundred and two,) by a special law passed the eighteenth of January, in the year eighteen hundred and five.

On witnesses about to leave the territory.

SEC. 12. *And be it further enacted*, That if any person, who may be a witness in any cause, depending in any of the said courts, shall be under the necessity of leaving this territory before such cause is to be tried, or even before it be at issue, upon oath thereof being made before any judge or justice of the court, wherein the cause is depending, such judge or justice is hereby empowered to take the deposition of such witness, provided it shall appear by the oath of an indifferent person that sufficient notice of the time and place of such application has been given to the opposite party; or such judge or justice may order the clerk of the court wherein such cause is depending, to issue a commission to one or more persons to take the deposition of such witness; such notice being first given to the adverse party of the time and place, when and where such deposition is to be taken, as the judge or justice, awarding such commission, shall direct; which deposition, when returned, taken in manner aforesaid, shall be received as legal evidence.

Testimony to be taken by interrogatories.

SEC. 13. *And be it further enacted*, That in any case, depending as aforesaid, either party wishing to improve the testimony of witnesses absent from the territory, may take the same by interrogatories, the party making oath before any one of the judges, justices, or clerk of the court, where such cause is depending, of the absence of such witness; and that he believes his testimony material; such judge, justice, or clerk may, if the oath be taken before the clerk, issue, or if it be taken before a judge or justice, may order the clerk of the court, in which such cause is depending, to issue a commission as aforesaid, directing the commissioner or commissioners to call the witness or witnesses before him or them, at a time and place by him or them to be appointed. But the party applying for such *dedimus* shall file his interrogatories in the clerk's office, and serve the opposite party with a copy thereof, with notice of the day on which such *dedimus* will issue, at least ten days before the same shall issue; in which time the opposite party may file his cross interrogatories; and the interrogatories, and cross interrogatories, if any there be, shall accompany such *dedimus*; and if any deposition taken by interrogatories, shall contain any testimony but the answers to such interrogatories, such surplusage shall not be read in evidence.

SEC. 14, *And be it further enacted*, That all depositions shall be considered as taken *de bene esse*.

NOTE.—Other regulations relating to Depositions, were made in 1811, in the act concerning *Judicial Proceedings*, which will be found under that title: This act provides in the sixteenth section, That if any party in any suit at Common Law, or in Chancery, shall make oath that he verily believes his claim or defence, (as the case may be) or a material point thereof depends on a single witness, the court, or the clerk in vacation, may award a commission to take the deposition of such witness, *de bene esse*, although he or she be not about to depart the country, nor under any disability, the party in such case giving reasonable and usual notice of the time and place of taking such deposition to the adverse party.

And be it further enacted, That when any commission shall be obtained to take the deposition of a witness, in a suit depending in any of the courts of this territory, where the plaintiff or defendant in such suit doth not reside in the same, or hath not an agent or attorney within the same, to whom notice of the time and place of taking such deposition can be given, then the person obtaining commission, having published in any public newspaper printed within the city of Natchez, four weeks successively, the time and place, when and where the witness is to be examined, and the name of the witness, together with the name of the parties to the suit in which such witness is to be examined; it shall and may be lawful for any plaintiff or defendant as aforesaid, to proceed to take any deposition authorized by the commission issuing from the court agreeable to law, where the suit depends as aforesaid; and such deposition when taken and returned to the clerk's office agreeably to the rules of law and of the court from whence the commission issued, shall there be filed and allowed to be read in evidence, in the same manner, and under the like restrictions, as if notice had been duly given to the opposite party, any law, usage, or custom to the contrary, in any wise, notwithstanding; and the printer may demand and receive his usual allowance for publishing such advertisement four weeks, which shall be taxed in the bill of costs as other costs of suit.

And it is further enacted, (in Sec. 30) That each and every witness, summoned in any cause in this territory, shall be authorized to demand of the party, at whose instance such witness was summoned, at the expiration of each term, his compensation for attending as aforesaid, and if the party shall refuse or neglect to pay such witness, he, she, or they may bring suit, and recover the same, before any justice of the peace, or court of record, having jurisdiction thereof, upon the certificate of the clerk, stating the number of days such witness attended, and the amount he is entitled to receive for the same, which certificate the clerk is hereby required to give at any time, upon the application of a witness, and the party paying the same, may file said certificate with the receipt of the witness for his compensation in the clerk's office.

NOTE.—The Act relating to justices of the peace, passed in December 1814, (see Title "Justices of the Peace,") section 4, authorizes them to issue *subpœnas* for witnesses within the county, or if out of the county, a commission to some justice of the peace or of the quorum in the county they reside in, to take their deposition. It also (in section 14,) inflicts a penalty of ten dollars with costs, on any witness who, having been subpœnaed, fails to attend. An Act concerning Judicial Proceedings, passed in November 1818, provides in section 9, "That Justices may issue subpœnas for witnesses, and commissions to take testimony, &c. See page 475.

CHAPTER II.

An Act respecting Slaves.—*Passed March* 6, 1805.

In what case slaves may be witnesses.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in general assembly convened*, That no slave be admitted a witness against any person, in any matter, cause, or thing whatsoever, civil or criminal, except in criminal cases, in which the evidence of one slave shall be admitted for or against another slave.

NOTE.—The remaining part of the act will be found under Title "Negroes."

APPENDIX.

DECLARATION OF INDEPENDENCE.

IN CONGRESS, JULY 4, 1776.

The Unanimous Declaration of the Thirteen United States of America.

Propriety of the declaration.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate, and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Unalienable rights of the people, &c.

We hold these truths to be self-evident:—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world:

Absolute tyranny the object of the king of Great Britain.

Recitation of injuries and usurpations on the part of the British crown.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained: and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavoured to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

Petitions for redress unavailing, &c.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Appeal to the British people fruitless, &c.

Nor have we been wanting in attentions to our British brethren: We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war, in peace friends.

Declaration of independence.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that, as free and independent states, they have full power

The colonies absolved from their allegiance, &c.

to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honour.

Mutual pledge of fidelity.

JOHN HANCOCK.

NEW-HAMPSHIRE.
Josiah Bartlett,
William Whipple,
Matthew Thornton.
MASSACHUSETTS BAY.
Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.
RHODE ISLAND, &c.
Stephen Hopkins,
William Ellery.
CONNECTICUT.
Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.
NEW-YORK.
William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.
NEW-JERSEY.
Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.
PENNSYLVANIA.
Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.
DELAWARE.
Cesar Rodney,
George Read,
Thomas M'Kean.
MARYLAND.
Samuel Chase,
William Paca,
Thomas Stone,
Charles Caroll, of Carrollton.
VIRGINIA.
George Wythe
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, jr.
Francis Lightfoot Lee,
Carter Braxton.
NORTH CAROLINA.
William Hooper,
Joseph Hewes,
John Penn.
SOUTH CAROLINA.
Edward Rutledge,
Thomas Heyward, jr.
Thomas Lynch, jr.
Arthur Middleton.
GEORGIA.
Button Gwinnett,
Lyman Hall,
George Walton.

CONSTITUTION OF THE UNITED STATES.

We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.—SECTION I.

Legislative powers.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2.

Members of house of representatives, how chosen.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states: and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Qualification of members of house of representatives.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Apportionment of representatives.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New-Hampshire* shall be entitled to choose three; *Massachusetts* eight; *Rhode Island* and *Providence Plantations* one; *Connecticut* five; *New-York* six; *New-Jersey* four; *Pennsylvania* eight; *Delaware* one; *Maryland* six; *Virginia* ten; *North Carolina* five; *South Carolina* five; and *Georgia* three.

Vacancies, how filled.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

H. of rep. to choose their officers—power of impeachment.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote. Senate, how chosen.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies. Senators classed. Vacancies, how filled.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen. Senators' qualification.

4. The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided. Vice-president.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States. Senate to choose officers.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present. Try impeachments.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law. Judgment on impeachment.

SECTION 4.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators. Elections, how held.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day. Congress assemble annually.

SECTION 5.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel Elections, how judged. Quorum in senate and house of rep.

the attendance of absent members, in such manner and under such penalties as each house may provide.

Rules. 2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Journals of each house. Yeas and nays. 3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Adjournment. 4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6.

Compensation. Privileges. 1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Members not eligible to office. 2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION 7.

Revenue bills. 1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Passing bills. Veto. 2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill. Resolutions, &c. how passed.

SECTION 8.

The congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States: Powers of congress. Taxes.

2. To borrow money on the credit of the United States: Loans.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes: Commerce.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States. Naturalization. Bankruptcies.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures: Coin, weights and measures.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States: Punish counterfeiting.

7. To establish post offices and post roads: Post offices, &c.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries: Science and arts.

9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations: Courts. Punish piracies, &c.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water: Declare war.

11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years: Raise armies.

12. To provide and maintain a navy: Navy.

13. To make rules for the government and regulation of the land and naval forces: Military law.

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions: Call out the militia.

15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress: Organize militia.

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, Exclusive jurisdiction.

become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings:—and,

Make all laws necessary, &c.

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION 9.

Importation of slaves after 1808.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Habeas corpus.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Attainder.

3. No bill of attainder, or ex post facto law, shall be passed.

Tax.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No exportation duty.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another.

Money, how drawn.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Titles of nobility not allowed.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

Limitations of the powers of the individual states.

1. No state shall enter into any treaty, alliance, or confederation: grant letters of marque and reprisal, coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or

compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.—SECTION 1.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

Executive power.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Manner of electing the president and vice-president. But see amendments, article 12.

3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate, and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then, from the five highest on the list, the said house shall, in like manner, choose the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes the senate shall choose from them, by ballot, the vice president.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president, neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Who may be elected president.

In what cases the vice president to act as president. 6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

President's compensation. 7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation.

His oath. 9. "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend, the constitution of the United States."

SECTION 2.

President U. States' powers. 1. The president shall be commander and chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

Make treaties. 2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and, by and with the advise and consent of the senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

Appoint officers.

Vacancies. 3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

President's duties. 1. He shall, from time to time, give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

Officers removable by impeachment.

1. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.—SECTION 1.

Judicial powers and tenure of judges.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2.

Jurisdiction, extent of.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority: to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

Whether original or appellate.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

Trials by jury.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed, but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3.

Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Attainder.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.—SECTION 1.

Acts and records of the states.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

SECTION 2.

Citizens' privileges.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Fugitives from justice.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

From service.

3. No person held to service or labour in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

SECTION 3.

New states admitted.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4.

Republican form.

1. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

Amendments, how attained.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thou-

sand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal sufferage in the senate.

ARTICLE VI.

Prior debts of government.

1. All debts contracted and engagements entered into, before, the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Constitution and treaties are the supreme law.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

Oath to the constitution

No religious test.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

Ratification.

1. The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

NEW-HAMPSHIRE.
John Langdon,
Nicholas Gilman.
MASSACHUSETTS.
Nathaniel Gorham,
Rufus King.
CONNECTICUT.
William S. Johnson,
Roger Sherman.
NEW-YORK.
Alexander Hamilton.
NEW-JERSEY.
William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.
PENNSYLVANIA.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersol,
James Wilson,
Governeur Morris.
DELAWARE.
George Read,
Gunning Bedford, jr.
John Dickinson,
Richard Bassett,

Jacob Broom.
MARYLAND.
James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.
VIRGINIA.
John Blair,
James Madison, jun.
NORTH CAROLINA.
William Blount,
Richard Dobbs Spaight,
Hugh Williamson.
SOUTH CAROLINA.
John Rutledge,
Charles C. Pinckney,
Charles Pinckney,
Pierce Butler.
GEORGIA.
William Few,
Abraham Baldwin.

Attest,
WILLIAM JACKSON, Secretary.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.*

Rights of conscience, freedom of the press, &c.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

Of the right to bear arms.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

Of quartering troops.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

Of searches, seizures, and general warrants.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

Of indictments, punishments, &c.

No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

Of trial in criminal cases, and the rights of a defendant.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which

* March 4th, 1798.

district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of council for his defence.

ARTICLE VII.

Of trial in civil cases.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Of bail and fines.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

Of rights reserved.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

Powers not delegated.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.*

*Dec. 2, 1793.

Of the judicial power.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.*

*Oct. 17, 1808.

Manner of electing the president and vice president.

1. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves: They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of re-

presentatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the senate shall choose the vice president: a quorum for the purpose shall consist of two-thirds of the whole number of senators; and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

An Act to enable the People of the Alabama Territory to form a Constitution and State Government, and for the Admission of such State into the Union, on an equal Footing with the original States.—*Passed March* 2, 1819.

The inhabitants of Alabama authorized to form a consitution and state government.

To be admitted into the Union.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the inhabitants of the territory of Alabama be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper; and that the said territory, when formed into a state, shall be admitted into the Union, upon the same footing with the original states, in all respects whatever.

Boundaries of the state.

Including islands within six leagues of the shore.

Sec. 2. *And be it further enacted*, That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning at the point where the thirty-first degree of north latitude intersects the Perdido river; thence, east, to the western boundary line of the state of Georgia; thence, along said line, to the southern boundary line of the state of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence, by a direct line, to the northwest corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same, to the beginning.

The line of demarcation between Mississippi and the state to be formed, to be run and cut by the surveyors of lands south of Tennessee and of Alabama; and if it should appear, &c.

Sec. 3. *And be it further enacted*, That it shall be the duty of the surveyor of the lands of the United States south of the state of Tennessee, and the surveyor of the public lands in the Alabama territory, to run and cut out the line of demarcation, between the state of Mississippi and the state to be formed of the Alabama territory; and if it should appear to said surveyors, that so much of said line designated in the preceding section, running due south, from the northwest corner of Washington county to the Gulf of Mexico, will encroach on the counties of Wayne, Green, or Jackson, in said state of Mississippi, then the same shall be so altered as to run in a direct line from the northwest corner of Washington county to a point on the Gulf of Mexico, ten miles east of the mouth of the river Pascagola.

Qualified voters to choose representatives to form a constitution.

Sec. 4. *And be it further enacted*, That all white male citizens of the United States, who shall have arrived at the age of twenty-one years, and have resided in said territory three months previous to the day of election, and all persons having, in other respects, the legal qualifications to vote for representatives in the General Assembly of the said territory, be, and they are hereby authorized to choose representatives to form a constitution, who shall be appointed among the several counties as follows:

Appointment of representatives.

From the county of Madison, eight representatives: Madison.
From the county of Monroe, four representatives: Monroe.
From the county of Blount, three representatives: Blount.
From the county of Limestone, three representatives: Limestone.
From the county of Shelby, two representatives: Shelby.
From the county of Montgomery, two representatives: Montgomery.
From the county of Washington, two representatives: Washington.
From the county of Tuskaloosa, two representatives: Tuskaloosa.
From the county of Lawrence, two representatives: Lawrence.
From the county of Franklin, two representatives: Franklin.
From the county of Cotaco, two representatives: Cotaco.
From the county of Clarke, two representatives: Clarke.
From the county of Baldwin, one representative: Baldwin.
From the county of Cahawba, one representative: Cahawba.
From the county of Conecuh, one representative: Conecuh.
From the county of Dallas, one representative: Dallas.
From the county of Marengo, one representative: Marengo.
From the county of Marion, one representative: Marion.
From the county of Mobile, one representative: Mobile.
From the county of Lauderdale, one representative: Lauderdale.
From the county of St. Clair, one representative: St. Clair.
From the county of Autauga, one representative: Autauga.

Election to be holden on the first Monday and Tuesday in May, 1819, &c.

And the election for the representatives aforesaid shall be holden on the first Monday and Tuesday in May next, throughout the several counties in the said territory, and shall be conducted in the same manner, and under the same regulations, as prescribed by the laws of the said territory, regulating elections therein for the members of the house of representatives.

Members of the convention to meet at Huntsville on the first Monday in July, 1819, and to determine, &c.

Sec. 5. *And be it further enacted*, That the members of the convention, thus duly elected, be, and they are hereby authorized to meet, at the town of Huntsville, on the first Monday in July next; which convention, when met, shall first determine, by a majority of the whole number elected, whether it be, or be not, expedient, at that time, to form a constitution and state government for the people within the said territory: And if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and state government: *Provided*, That the same, when formed, shall be republican, and not repugnant to the principles of the ordinance of

Convention authorized to form a constitution, &c.

Proviso; the government to be republican and not repugnant to the ordinance of 13th July, 1787, so far, &c.

the thirteenth of July, one thousand seven hundred and eighty-seven, between the people and states of the territory north-west of the river Ohio, so far as the same has been extended to the said territory, by the articles of agreement between the United States and the state of Georgia, or of the constitution of the United States.

Propositions, offered to the convention; to be obligatory if accepted.

Sec. 6. *And be it further enacted*, That the following propositions be, and the same are hereby offered to the convention of the said territory of Alabama, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:

1. Sec. No. 16, in every township, for the use of schools.

First. That the section numbered sixteen in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools.

2. Salt springs and lands for working them granted to the state, for the use of the people.

Proviso; the legislature not to sell, nor lease for more than ten years.

Second. That all salt springs within the said territory, and the lands reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding in the whole the quantity contained in thirty-six entire sections, shall be granted to the said state, for the use of the people of the said state, the same to be used, under such terms, conditions, and regulations, as the legislature of the said state shall direct: *Provided*, the said legislature shall never sell nor lease the same for a longer term than ten years at any one time.

3. Five per ct. of nett proceeds of land, sold after 1st Sept. 1819, to be reserved for making public roads, canals, &c.

Third. That five per cent. of the nett proceeds of the lands lying within the said territory, and which shall be sold by Congress, from and after the first day of September, in the year one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state, under the direction of Congress.

4. An entire township, for a seminary of learning, together with the one heretofore reserved.

The secretary of the treasury may reserve them in small tracts.

Proviso; no tract less than two sections.

Proviso; irrevocable ordinance disclaiming right to waste lands.

Waste lands at the sole

Fourth. That thirty-six sections, or one entire township, to be designated by the Secretary of the Treasury, under the direction of the President of the United States, together with the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state, to be appropriated solely to the use of such seminary by the said legislature. And the Secretary of the Treasury, under the direction as aforesaid, may reserve the seventy-two sections, or two townships, hereby set apart for the support of a seminary of learning, in small tracts: *Provided*, that no tract shall consist of less than two sections: *And provided always*, that the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory, do agree and declare that they for ever disclaim all right and title to the waste or unappropriated lands lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States; and, moreover, that each and every tract of land sold by the United States, after the first day of September, in the year one thousand eight hundred and nineteen, shall be and remain exempt from any tax laid by the order, or under the authority, of the state, whether for state, county, township, parish, or any other purpose whatever, for the term of five years, from and after the respective days of the sales thereof: and that the lands belonging to citizens of the United States, residing without the said state, shall never be taxed higher than the lands belonging to persons residing therein; and that no tax shall be imposed on lands, the property of the United States; and that all navigable waters within the said state shall for ever remain public highways, free to the citizens of said state and of the United States, without any tax, duty, impost, or toll, therefor, imposed by the said state.

disposal of the United States.

Tract of land sold by the U. States to be exempt from taxes for 5 years.

Lands of non-resident citizens not to be taxed higher, &c.

No tax on U. States' lands.

Sec. 7. *And be it further enacted*, That in lieu of a section of land, provided to be reserved for the seat of government of the said territory, by an act, entitled "An Act respecting the surveying and sale of the Public Lands in the Alabama Territory," there be granted to the said state, for the seat of the government thereof, a tract of land containing sixteen hundred and twenty acres, and consisting of sundry fractions and a quarter section, in sections thirty-one and thirty-two, in township sixteen, and range ten, and in sections five and six, in township fifteen, and range ten, and in sections twenty-nine and thirty, in the same township and range, lying on both sides of the Alabama and Cahawba rivers, and including the mouth of the river Cahawba, and which heretofore has been reserved from public sale, by order of the President of the United States.

1620 acres of land for a seat of government, in lieu, &c.

Sec. 8. *And be it further enacted*, That, until the next general census shall be taken, the said state shall be entitled to one representative in the House of Representatives of the United States.

The state entitled to one representative in congress until the next general census.

Sec. 9. *And be it further enacted*, That, in case the said convention shall form a constitution and state government for the people of the territory of Alabama, the said convention, as soon thereafter as may be, shall cause a true and attested copy of such constitution or frame of government as shall be formed or provided, to be transmitted to Congress, for its approbation.

A true and attested copy of the constitution to be transmitted to congress, &c.

CONSTITUTION OF THE STATE OF ALABAMA.

Preamble.

We, the people of the Alabama Territory, having the right of admission into the general government, as a member of the union, consistent with the constitution and laws of the United States, by our representatives, assembled in convention at the town of Huntsville, on Monday, the fifth day of July, one thousand eight hundred and nineteen, in pursuance of an Act of congress, entitled "An Act to enable the people of the Alabama Territory to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States;" in order to establish justice, ensure tranquillity, provide for the common defence, promote the general welfare, and secure to ourselves and our posterity the rights of life, liberty, and property, do ordain and establish the following constitution, or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of "The State of Alabama." And we do hereby recognize, confirm, and establish the boundaries assigned to said state by the act of congress aforesaid, "to wit: beginning at the point where the thirty-first degree of north latitude intersects the Perdido river, thence, east, to the western boundary line of the state of Georgia; thence, along said line, to the southern boundary line of the state of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence, by a direct line, to the northwest corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same, to the beginning"—subject to such alteration as is provided in the third section of said act of congress, and subject to such enlargement as may be made by law in consequence of any cession of territory by the United States, or either of them.

ARTICLE I.

Declaration of Rights.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare:

All freemen are equal.

Sec. 1. That all freemen, when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive, separate public emoluments or privileges, but in consideration of public services.

Political power in the people.

Sec. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit: and, therefore, they have at all times an unalienable and indefeasible right to alter, reform, or abolish their form of government, in such manner as they may think expedient.

Rights of conscience

Sec. 3. No person within this state shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in the manner most agreeable to his own conscience; nor be compelled to attend any place of worship; nor shall any one ever be obliged to pay any tithes, taxes, or other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry.

not to be interfered with.

Sec. 4. No human authority ought, in any case whatever, to control or interfere with the rights of conscience.

No person molested.

Sec. 5. No person shall be hurt, molested, or restrained, in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

Civil rights not affected by religious belief.

Sec. 6. The civil rights, privileges, or capacities of any citizen, shall in no way be diminished, or enlarged, on account of his religious principles.

No established religion or religious test.

Sec. 7. There shall be no establishment of religion by law; no preference shall ever be given by law to any religious sect, society, denomination, or mode of worship: and no religious test shall ever be required as a qualification to any office or public trust under this state.

Freedom of speech, &c.

Sec. 8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

Searches.

Sec. 9. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

Rights of accused in criminal cases.

Sec. 10. In all criminal prosecutions, the accused has a right to be heard by himself and counsel; to demand the nature and cause of the accusation, and have a copy thereof: to be confronted by the witnesses against him: to have compulsory process for obtaining witnesses in his favour; and, in all prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed: he shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

No person accused, &c. except by law.

Sec. 11. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but in virtue of a law, established and promulgated prior to the offence, and legally applied.

Indictable offences, how proceeded against.

Sec. 12. No person shall, for any indictable offence, be proceeded against criminally, by information; except in cases arising in the land and naval forces, or the militia when in actual service, or, by leave of the court, for oppression or misdemeanor in office.

No person twice tried for same offence.

Sec. 13. No person shall, for the same offence be twice put in jeopardy of life or limb: nor shall any person's property be taken or applied to public use, unless just compensation be made therefor.

Courts to be open, &c. SEC. 14. All courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.

Laws not suspended but by general assembly. SEC. 15. No power of suspending laws shall be exercised, except by the general assembly, or its authority.

Of bail and fines. SEC. 16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Bailable offences. SEC. 17. All persons shall, before conviction, be bailable by sufficient securities, except for capital offences, when the proof is evident, or the presumption great: and the privilege of the writ of "habeas corpus" shall not be suspended, unless when, in cases of rebellion, or invasion, the public safety may require it.

Debtors, when discharged. SEC. 18. The person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

No ex post facto laws. SEC. 19. No ex post facto law, nor law impairing the obligation of contracts, shall be made.

No attaints. SEC. 20. No person shall be attainted of treason or felony by the general assembly. No attainder shall work corruption of blood, nor forfeiture of estate.

No forfeiture from suicide. SEC. 21. The estates of suicides shall descend or vest as in cases of natural death; if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Assembly of citizens. SEC. 22. The citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

May bear arms. SEC. 23. Every citizen has a right to bear arms in defence of himself and the state.

Standing army, &c. SEC. 24. No standing army shall be kept up without the consent of the general assembly; and, in that case, no appropriation of money for its support shall be for a longer term than one year; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Quartering troops. SEC. 25. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

No titles of nobility. SEC. 26. No title of nobility, or hereditary distinction, privilege, honour, or emolument, shall ever be granted or conferred in this state; nor shall any office be created, the appointment of which shall be for a longer term than during good behaviour.

Emigration. SEC. 27. Emigration from this state shall not be prohibited, nor shall any citizen be exiled.

Trial by jury. SEC. 28. The right of trial by jury shall remain inviolate.

Right of prosecuting, &c. SEC. 29. No person shall be debarred from prosecuting or defending any civil cause, for or against him or herself, before any tribunal in this state, by him or herself or counsel.

Sec. 30. This enumeration of certain rights shall not be construed to deny or disparage others retained by the people: and to guard against any encroachments on the rights herein retained, or any transgression of any of the high powers herein delegated, we declare, that every thing in this article is excepted out of the general powers of government, and shall for ever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall be void. Enumeration of rights.

ARTICLE II.

Distribution of Powers.

Sec. 1. The powers of the government of the state of Alabama shall be divided into three distinct departments; and each of them confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another. Three distinct departments.

Sec. 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances herein after expressly directed or permitted. Persons belonging to one not to interfere with the others.

ARTICLE III.

Legislative Department.

Sec. 1. The legislative power of this state shall be vested in two distinct branches: the one to be styled the senate, the other the house of representatives, and both together "The General Assembly of the State of Alabama;" and the style of their laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened." Two branches. Style of laws.

Sec. 2. The members of the house of representatives shall be chosen by the qualified electors, and shall serve for the term of one year, from the day of the commencement of the general election, and no longer. Members, how chosen.

Sec. 3. The representatives shall be chosen every year, on the first Monday and the day following in August, until otherwise directed by law. Election, when held.

Sec. 4. No person shall be a representative unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the county, city, or town, for which he shall be chosen, and shall have attained the age of twenty-one years. Qualification of members.

Sec. 5. Every white male person of the age of twenty-one years, or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last three months within the county, city, or town, in which he offers to vote, shall be deemed a qualified elector; provided, that no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to Of electors.

vote at any election in this state; and provided, also, that no elector shall be entitled to vote except in the county, city, or town (entitled to separate representation) in which he may reside at the time of the election.

Electors' privileges. SEC. 6. Electors shall, in all cases, except in those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same.

Elections by ballot. SEC. 7. In all elections by the people, the electors shall vote by ballot, until the general assembly shall otherwise direct.

Elections, where held. SEC. 8. Elections for representatives for the several counties shall be held at the place of holding their respective courts, and at such other places as may be prescribed by law; provided, that when it shall appear to the general assembly that any city or town shall have a number of white inhabitants equal to the ratio then fixed, such city or town shall have a separate representation, according to the number of white inhabitants therein; which shall be retained so long as such city or town shall contain a number of white inhabitants equal to the ratio which may from time to time be fixed by law; and thereafter, and during the existence of the right of separate representation, in such city or town, elections for the county in which such city or town (entitled to such separate representation) is situated, shall not be held in such city or town; but it is understood, and hereby declared, that no city or town shall be entitled to separate representation, unless the number of white inhabitants in the county in which such city or town is situated, residing out of the limits of said city or town, be equal to the existing ratio; or unless the residuum or fraction of such city or town shall, when added to the white inhabitants of the county residing out of the limits of said city or town, be equal to the ratio fixed by law for one representative; and provided, that, if the residuum or fraction of any city or town, entitled to separate representation, shall, when added to the residuum of the county in which it may lie, be equal to the ratio fixed by law for one representative, then the aforesaid county, city, or town, having the largest residuum, shall be entitled to such representation: and provided also, that when there are two or more counties adjoining, which have residuums or fractions over and above the ratio then fixed by law, if said residuums or fractions, when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum.

Separate representation of cities or towns.

Residuum, how disposed of.

Proviso.

Enumeration, when and how taken. SEC. 9. The general assembly shall, at their first meeting, and in the years one thousand eight hundred and twenty, one thousand eight hundred and twenty-three, one thousand eight hundred and twenty-six, and every six years thereafter, cause an enumeration to be made of all the inhabitants of the state, and the whole number of the representatives shall, at the first cession held, after making every such enumeration, be fixed by the general assembly, and apportioned among the several counties, cities, or towns, entitled to separate representation,

Apportionment of representation.

according to their respective numbers of white inhabitants; and the said apportionment, when made, shall not be subject to alteration, until after the next census shall be taken. The house of representatives shall not consist of less than forty-four, nor more than sixty members, until the number of white inhabitants shall be one hundred thousand, and after that event, the whole number of representatives shall never be less than sixty, nor more than one hundred; provided, however, that each county shall be entitled to at least one representative.

Senate apportioned.

SEC. 10. The general assembly shall, at the first session after making every such enumeration, fix by law the whole number of senators, and shall divide the state into the same number of districts, as nearly equal in the number of white inhabitants as may be, each of which districts shall be entitled to one senator and no more; provided, that the whole number of senators shall never be less than one-fourth, nor more than one-third, of the whole number of representatives.

Senatorial districts.

SEC. 11. When a senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a district.

Senators, how chosen. Term of service. Qualifications.

SEC. 12. Senators shall be chosen by the qualified electors, for the term of three years, at the same time, in the same manner, and at the same places, where they may vote for members of the house of representatives; and no person shall be a senator unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained to the age of twenty-seven years.

Classification of senators.

SEC. 13. The senators chosen according to the apportionment under the census ordered to be taken in one thousand eight hundred and twenty-six, when convened, shall be divided by lot into three classes, as nearly equal as may be. The seats of the senators of the first class shall be vacated at the expiration of the first year, those of the second class at the expiration of the second year, and those of the third class at the expiration of the third year, so that one-third may be annually chosen thereafter, and a rotation thereby kept up perpetually. Such mode of classifying new additional senators shall be observed as will, as nearly as possible, preserve an equality of members in each class.

House of representatives to choose a speaker. Senate to choose a president. To judge, &c. Contested elections.

SEC. 14. The house of representatives, when assembled, shall choose a speaker, and its other officers; and the senate shall, annually, choose a president, and its other officers; each house shall judge of the qualifications, elections, and returns, of its own members: but a contested election shall be determined in such manner as shall be directed by law.

Quorum. Absent members.

SEC. 15. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as each house may provide.

Rules. SEC. 16. Each house may determine the rules of its own proceedings, punish members for disorderly behaviour, and, with the consent of two-thirds, expel a member; but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

Punishment for contempt. SEC. 17. Each house, during the session, may punish, by imprisonment, any person, not a member, for disrespectful or disorderly behaviour in its presence, or for obstructing any of its proceedings; provided, that such imprisonment shall not, at any one time, exceed forty-eight hours.

Journal of proceedings. SEC. 18. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, Yeas and nays. on any question, shall, at the desire of any two members present, be entered on the journals. Protest. And any member of either house shall have liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals.

Privileged from arrest, &c. SEC. 19. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same; allowing one day for every twenty miles such member may reside from the place at which the general assembly is convened; nor shall any member be liable to answer for any thing spoken in debate in either house, in any court or place elsewhere.

Vacancies, how filled. SEC. 20. When vacancies happen in either house, the governor, or the person exercising the powers of the governor, shall issue writs of election to fill such vacancies.

Doors kept open, except when. SEC. 21. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

Adjournment by consent. SEC. 22. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Bills, how to originate, &c. SEC. 23. Bills may originate in either house, and be amended, altered, or rejected, by the other; but no bill shall have the force of a law until on three several days it be read in each house, and free discussion be allowed thereon, unless, in cases of urgency, four-fifths of the house in which the bill shall be depending may deem it expedient to dispense with this rule: and every bill, having passed both houses, shall be signed by the speaker and president of their respective houses; provided, that all bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

Compensation of members.

Sec. 24. Each member of the general assembly shall receive from the public treasury such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

Members not eligible to office.

Sec. 25. No senator or representave shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased, during such term; except such offices as may be filled by elections by the people.

What offices disqualify persons from being members.

Sec. 26. No person holding any lucrative office under the United States, (the office of postmaster excepted,) in this state, or any other power, shall be eligible to the general assembly; provided, that offices in the militia to which there is attached no annual salary, or the office of justice of the peace, or that of the quorum or county court, while it has no salary, shall not be deemed lucrative.

Public defaulters disqualified.

Sec. 27. No person who may hereafter be a collector or holder of public moneys shall have a seat in either house of the general assembly, or be eligible to any office of trust or profit under this state, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

Firstelection, when held.

Sec. 28. The first election for senators and representatives shall be general throughout the state; and shall be held on the third Monday and Tuesday in September next.

First session, when and where held. Subsequent session. Removal of seat of government.

Sec. 29. The first session of the general assembly shall commence on the fourth Monday in October next, and be held at the town of Huntsville, and all subsequent sessions at the town of Cahawba, until the end of the first session of the general assembly to be held in the year one thousand eight hundred and twenty-five; during that session the general assembly shall have power to designate by law (to which the executive concurrence shall not be required) the permanent seat of government, which shall not thereafter be changed; provided, however, that unless such designation be then made by law, the government shall continue permanently at the town of Cahawba; and provided also, that the general assembly shall make no appropriations previous to the year one thousand eight hundred and twenty-five, for the building of any other state-house than that now provided for by law.

ARTICLE IV.

Executive Department.

Vested in a governor.

Sec. 1. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Alabama.

Governor, how elected.

Sec. 2. The governor shall be elected by the qualified electors at the time and places when they shall respectively vote for representatives.

Returns, how made. Votes, how counted. Plurality to elect. Tie. Contested elections.

SEC. 3. The returns of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in presence of both houses of the general assembly. The person having the highest number of votes shall be governor, but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

Term of service. Qualifications.

SEC. 4. The governor shall hold his office for the term of two years from the time of his installation, and until his successor shall be duly qualified, but shall not be eligible for more than four years in any term of six years; he shall be at least thirty years of age, shall be a native citizen of the United States, and shall have resided in this state at least four years next preceding the day of his election.

Compensation.

SEC. 5. He shall at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected.

Commander of militia, &c.

SEC. 6. He shall be commander in chief of the army and navy of this state, and of the militia thereof, except when they shall be called into the service of the United States. And when acting in the service of the United States, the general assembly shall fix his rank.

May require information of executive officers.

SEC. 7. He may require information in writing from the officers of the executive department, on any subject relating to the duties of their respective offices.

Convening and adjourning general assembly.

SEC. 8. He may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; in case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next annual meeting of the general assembly.

Give information to general assembly.

SEC. 9. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

Execution of laws.

SEC. 10. He shall take care that the laws be faithfully executed.

His powers in criminal cases.

SEC. 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly.

SEC. 12. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and the present seal of the territory shall be the seal of the state, until otherwise directed by the general assembly. Seal.

SEC. 13. All commissions shall be in the name, and by the authority of the state of Alabama, be sealed with the state seal, signed by the governor, and attested by the secretary of state. Commissions.

SEC. 14. There shall be a secretary of state appointed by joint vote of both houses of the general assembly, who shall continue in office during the term of two years. He shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before the general assembly; and shall perform such other duties as may be required of him by law. Secretary of state, his appointment and duties.

SEC. 15. Vacancies that may happen in offices, the appointment to which is vested in the general assembly, shall be filled by the governor, during the recess of the general assembly, by granting commissions which shall expire at the end of the next session. Vacancies, how filled.

SEC. 16. Every bill, which shall have passed both houses of the general assembly, shall be presented to the governor: if he approve, he shall sign it, but if not, he shall return it with his objections, to the house in which it shall have originated, who shall enter the objections at large upon the journals, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections to the other house, by which it shall likewise be reconsidered; if approved by a majority of the whole number elected to that house, it shall become a law: but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journals of each house respectively: if any bill shall not be returned by the governor within five days, Sundays excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall not be a law. Governor's powers and duty in relation to bills.

SEC. 17. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him, or being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the cases of a bill. Joint resolutions to be passed as bills.

SEC. 18. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the president of the senate shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this constitution for the election of governor shall arrive, unless the general assembly Proceedings on impeachment, &c. of governor.

shall provide by law for the election of a governor to fill such vacancy, or until the governor absent or impeached shall return or be acquitted.

Who to administer the government.

SEC. 19. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the house of representatives shall in like manner administer the government.

Compensation.

SEC. 20. The president of the senate and speaker of the house of representatives, during the time they respectively administer the government, shall receive the same compensation which the governor would have received, had he been employed in the duties of his office.

Governor, where to reside.

SEC. 21. The governor shall always reside, during the session of the general assembly, at the place where their session may be held, and at all other times, wherever, in their opinion, public good may require.

Governor not to hold any office.

SEC. 22. No person shall hold the office of governor, and any other office or commission, civil or military, either in this state, or under any state, or the United States, or any other power, at one and the same time.

Treasurer and comptroller, how elected.

SEC. 23. A state treasurer and a comptroller of public accounts shall be annually elected, by joint vote of both houses of the general assembly.

Sheriff, how elected; term of service and qualification.

SEC. 24. A sheriff shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of three years, unless sooner removed, and who shall not be eligible to serve either as principal or deputy for the three succeeding years. Should a vacancy occur subsequent to an election, it shall be filled by the governor, as in other cases, and the person so appointed shall continue in office until the next general election, when such vacancy shall be filled by the qualified electors, and the sheriff then elected shall continue in office for three years.

Vacancies, how filled.

Militia.

Militia, how organized.

SEC. 1. The general assembly shall provide by law for organizing and disciplining the militia of this state, in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States in relation thereto.

Who excused.

SEC. 2. Any person who conscientiously scruples to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service.

Governor may call forth.

SEC. 3. The governor shall have power to call forth the militia to execute the laws of the state, to suppress insurrections, and repel invasions.

Officers, how elected. Proviso.

SEC. 4. All officers of the militia shall be elected or appointed in such manner as may be prescribed by law: Provided, that the general assembly shall not make any such elections or appointments, other than those of adjutants general, and quartermasters general.

Sec. 5. The governor shall appoint his aids-de-camp; majors general, their aids-de-camp, and all other division and staff officers; brigadiers general shall appoint their aids, and all other brigade staff officers; and colonels shall appoint their regimental staff officers. Aids, &c. how appointed.

Sec. 6. The general assembly shall fix by law the method of dividing the militia into divisions, brigades, regiments, battalions, and companies: and shall fix the rank of all staff officers. General assembly to divide militia, and fix rank of staff.

ARTICLE V.

Judicial Department.

Sec. 1. The judicial power of this state shall be vested in one supreme court, circuit courts to be held in each county in the state, and such inferior courts of law and equity, to consist of not more than five members, as the general assembly may, from time to time, direct, ordain, and establish. Judicial power, where vested.

Sec. 2. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: Provided, that the supreme court shall have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions. Powers of the supreme court.

Sec. 3. Until the general assembly shall otherwise prescribe, the powers of the supreme court shall be vested in, and its duties shall be performed by, the judges of the several circuit courts within this state: and they, or a majority of them, shall hold such sessions of the supreme court, and at such times as may be directed by law: Provided, that no judge of the supreme court shall be appointed before the commencement of the first session of the general assembly, which shall be begun and held after the first day of January, in the year one thousand eight hundred and twenty-five. Who to be judges of supreme court. Proviso.

Sec. 4. The supreme court shall be holden at the seat of government, but may adjourn to a different place, if that shall have become dangerous from an enemy or from disease. Supreme court, where holden.

Sec. 5. The state shall be divided into convenient circuits, and each circuit shall contain not less than three, nor more than six counties: and for each circuit there shall be appointed a judge, who shall, after his appointment, reside in the circuit for which he may be appointed. State to be divided into circuits.

Sec. 6. The circuit court shall have original jurisdiction in all matters, civil and criminal, within this state, not otherwise excepted in this constitution; but in civil cases, only when the matter or sum in controversy exceeds fifty dollars. Jurisdiction of circuit courts.

Sec. 7. A circuit court shall be held in each county in the state, at least twice in every year, and the judges of the several circuit courts may hold courts for each other, when they may deem it expedient, and shall do so when directed by law. When held.

Chancery courts, how established.

SEC. 8. The general assembly shall have power to establish a court or courts of chancery, with original and appellate equity jurisdiction; and until the establishment of such court or courts, the said jurisdiction shall be vested in the judges of the circuit courts respectively: Provided, that the judges of the several circuit courts shall have power to issue writs of injunction, returnable into the courts of chancery.

Courts of probate established.

SEC. 9. The general assembly shall have power to establish, in each county within this state, a court of probate, for the granting of letters testamentary and of administration and for orphans' business.

Justices of peace, their jurisdiction.

SEC. 10. A competent number of justices of the peace shall be appointed in and for each county, in such mode and for such term of office as the general assembly may direct. Their jurisdiction in civil cases shall be limited to causes in which the amount in controversy shall not exceed fifty dollars. And in all cases, tried by a justice of the peace, right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

Compensation of judges.

SEC. 11. Judges of the supreme and circuit courts, and courts of chancery, shall, at stated times, receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office: but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this state, the United States, or any other power.

How elected.

SEC. 12. Chancellors, judges of the supreme court, judges of the circuit courts, and judges of the inferior courts, shall be elected by joint vote of both houses of the general assembly.

Term of service. How removed.

SEC. 13. The judges of the several courts in this state shall hold their offices during good behaviour; and for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them, on the address of two-thirds of each house of the general assembly; *Provided, however*, that the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each house; *And provided further*, that the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defence, before any vote for such address shall pass; and in all such cases the vote shall be taken by yeas and nays, and entered on the journals of each house respectively; *And provided also*, that the judges of the several circuit courts who shall be appointed before the commencement of the first session of the general assembly which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-five, shall only hold their offices during good behaviour, until the end of the said session, at which time their commissions shall expire.

Age disqualifies.

SEC. 14. No person who shall have arrived at the age of seventy years shall be appointed to, or continue in, the office of judge in this state.

Clerks of courts, how elected. Term of service. Vacancies, how filled. Proviso.

Sec. 15. Clerks of the circuit and inferior courts in this state shall be elected by the qualified electors in each county, for the term of four years, and may be removed from office for such causes and in such manner as may be prescribed by law; and should a vacancy occur, subsequent to an election, it shall be filled by the judge or judges of the court in which such vacancy exists; and the person so appointed shall hold his office until the next general election; *Provided, however,* that after the year one thousand eight hundred and twenty-six, the general assembly may prescribe a different mode of appointment, but shall not make such appointment.

Conservators of the peace.

Sec. 16. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state; as also the judges of the circuit courts in their respective districts, and judges of the inferior courts in their respective counties.

Style of process.

Sec. 17. The style of all process shall be "The State of Alabama," and all prosecutions shall be carried on in the name, and by the authority of the state of Alabama, and shall conclude "against the peace and dignity of the same."

Attorney general and solicitors. Term of service and compensation.

Sec. 18. There shall be an attorney-general for the state, and as many solicitors as the general assembly may deem necessary, to be elected by a joint vote thereof, who shall hold their offices for the term of four years, and shall receive for their services a compensation, which shall not be diminished during their continuance in office.

Impeachments.

Who to impeach.

Sec. 1. The house of representatives shall have the sole power of impeaching.

How tried. Who liable. To take an oath. How convicted.

Sec. 2. All impeachments shall be tried by the senate: when sitting for that purpose, the senators shall be on oath or affirmation: and no person shall be convicted without the concurrence of two-thirds of the members present.

Who liable to impeachment. To what extend.

Sec. 3. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than removal from office, and to disqualification to hold any office of honour, trust, or profit, under the state; but the party convicted shall nevertheless be liable and subject to indictment, trial, and punishment, according to law.

ARTICLE VI.

General Provisions.

Oath to be taken.

Sec. 1. The members of the general assembly, and all officers, executive and judicial, before they enter on the execution of their respective offices, shall take the following oath or affirmation, to wit: "I solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and constitution of the state of Alabama, so long as I continue a citizen thereof, and that I will faithfully discharge, to the best of my abilities, the duties of ——, according to law: So help me God."

Treason defined. How convicted.

Sec. 2. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Duelling.

Sec. 3. The general assembly shall have power to pass such penal laws to suppress the evil practice of duelling, extending to disqualification from office or the tenure thereof, as they may deem expedient.

Bribery.

Sec. 4. Every person shall be disqualified from holding any office or place of honour or profit, under the authority of the state, who shall be convicted of having given or offered any bribe to procure his election or appointment.

Disqualifying laws. Free suffrage secured.

Sec. 5. Laws shall be made to exclude from office, from suffrage, and from serving as jurors, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult, or other improper conduct.

Elections by general assembly.

Sec. 6. In all elections by the general assembly, the members thereof shall vote *viva voce*, and the votes shall be entered on the journals.

Public money. Treasurer to make report.

Sec. 7. No money shall be drawn from the treasury, but in consequence of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually.

Lands taxed.

Sec. 8. All lands liable to taxation in this state, shall be taxed in proportion to their value.

State may be sued.

Sec. 9. The general assembly shall direct, by law, in what manner, and in what courts, suits may be brought against the state.

Deductions from salary for neglect of duty.

Sec. 10. It shall be the duty of the general assembly to regulate, by law, the cases in which deductions shall be made from the salaries of public officers, for neglect of duty in their official capacities, and the amount of such deduction.

Residence, &c.

Sec. 11. Absence on business of this state, or of the United States, or on a visit, or necessary private business, shall not cause a forfeiture of a residence once obtained.

Who disqualified from state offices.

Sec. 12. No member of congress, nor any person holding any office of profit or trust under the United States, (the office of postmaster excepted,) or either of them, or any foreign power, shall hold or exercise any office of profit under this state.

Divorces.

Sec. 13. Divorces from the bonds of matrimony shall not be granted but in cases provided for by law, by suit in chancery: and no decree for such divorce shall have effect until the same shall be sanctioned by two-thirds of both houses of the general assembly.

Sec. 14. In prosecutions for the publishing of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the courts. Libels, how tried.

Sec. 15. Returns of all elections for officers who are to be commissioned by the governor, and for members of the general assembly, shall be made to the secretary of state. Election returns.

Sec. 16. No new county shall be established by the general assembly, which shall reduce the county or counties, or either of them, from which it shall be taken, to a less content than nine hundred square miles; nor shall any county be laid off of less contents. Establishment of new counties, &c. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it was taken, until entitled by numbers to the right of separate representation. Right of suffrage.

Sec. 17. The general assembly shall, at their first session which may be holden in the year eighteen hundred and twenty-eight, or at the next succeeding session, arrange and designate boundaries for the several counties within the limits of this state, to which the Indian title shall have been extinguished, in such manner as they may deem expedient, which boundaries shall not be afterward altered, unless by the agreement of two-thirds of both branches of the general assembly; and, in all cases of ceded territory acquired by the state, the general assembly may make such arrangements and designations of the boundaries of counties within such ceded territory, as they may deem expedient, which shall only be altered in like manner: *Provided*, that no county hereafter to be formed shall be of less extent than nine hundred square miles. Regulation of counties, &c.

Sec. 18. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties, who may choose that summary mode of adjustment. Arbitrations.

Sec. 19. It shall be the duty of the general assembly, as soon as circumstances will permit, to form a penal code, founded on principles of reformation, and not of vindictive justice. Penal code.

Sec. 20. Within five years after the adoption of this constitution, the body of our laws, civil and criminal, shall be revised, digested, and arranged, under proper heads, and promulgated in such manner as the general assembly may direct: and a like revision, digest, and promulgation, shall be made within every subsequent period of ten years. Digest laws.

Sec. 21. The general assembly shall make provisions by law for obtaining correct knowledge of the several objects proper for improvement in relation to the navigable waters, and to the roads in this state, and for making a systematic and economical application of the means appropriated to those objects. Internal improvement.

Sec. 22. In the event of the annexation of any foreign territory to this state, by a cession from the United States, laws may be passed, extending to the inhabitants of such torritory all the rights and privileges which may be required by the terms of such cession; any thing in this constitution to the contrary notwithstanding.

Education.

Schools established and encouraged.

Schools, and the means of education, shall for ever be encouraged in this state; and the general assembly shall take measures to preserve, from unnecessary waste or damage, such lands as are or hereafter may be granted by the United States for the use of schools within each township in this state, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant. The general assembly shall take like measures for the improvement of such lands as have been or may be hereafter granted by the United States to this state, for the support of a seminary of learning, and the moneys which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and remain a fund for the exclusive support of a state university, for the promotion of the arts, literature, and the sciences; and it shall be the duty of the general assembly, as early as may be, to provide effectual means for the improvement and permanent security of the funds and endowments of such institution.

Establishment of Banks.

State bank and its branches, how established.

Sec. 1. One state bank may be established, with such number of branches as the general assembly may, from time to time, deem expedient: *Provided*, that no branch bank shall be established, nor bank charter renewed, under the authority of this state, without the concurrence of two-thirds of both houses of the general assembly; and provided, also, that not more than one bank nor branch bank shall be established, nor bank charter renewed, at any one session of the general assembly, nor shall any bank or branch bank be established, or bank charter renewed but in conformity with the following rules.

Rules.

1. At least two-fifths of the capital stock shall be reserved for the state.

2. A proportion of power in the direction of the bank shall be reserved to the state, equal at least to its proportion of stock therein.

3. The state, and the individual stockholders, shall be liable, respectively, for the debts of the bank, in proportion to their stock holden therein.

4. The remedy for collecting debts shall be reciprocal, for and against the bank.

5. No bank shall commence operations until half of the capital stock subscribed for, be actually paid in gold or silver, which amount shall, in no case, be less than one hundred thousand dollars.

6. In case any bank or branch bank shall neglect or refuse to pay, on demand, any bill, note, or obligation, issued by the corporation according to the promise therein expressed, the holder of any such note, bill, or obligation, shall be entitled

to receive and recover interest thereon, until the same shall be paid, or specie payments are resumed, by said bank, at the rate of twelve per cent. per annum from the date of such demand, unless the general assembly shall sanction such suspension of specie payments, and the general assembly shall have power, after such neglect or refusal, to adopt such measures as they may deem proper, to protect and secure the rights of all concerned, and to declare the charter of such bank forfeited.

Other banks may be admitted branches.

7. After the establishment of a general state bank, the banks of this state now existing may be admitted as branches thereof, upon such terms as the legislature and the said banks may agree, subject, nevertheless, to the preceding rules.

Slaves.

Regulation of slaves.

Sec. 1. The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state: *Provided*, that such person or slave be the *bona fide* property of such emigrants; and provided also, that laws may be passed to prohibit the introduction into this state of slaves, who have committed high crimes in other states or territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to prevent slaves from being brought into this state as merchandise, and also to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect, or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

Sec. 2. In the prosecution of slaves for crimes, of a higher grade than petit larceny, the general assembly shall have no power to deprive them of an impartial trial by a petit jury.

Sec. 3. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

Mode of amending and revising the Constitution.

Constitution, how amended, &c.

The general assembly, whenever two-thirds of each house shall deem it necessary, may propose amendments to this constitution, which proposed amendments shall be duly published in print, at least three months before the next general election of representatives, for the consideration of the people, and it shall be the duty of the several returning officers, at the next general election which shall be held for representatives, to open a poll for, and make a return to the secretary of state for the time being, of the names of all those voting for representatives, who have voted on such proposed amendments, and if thereupon it shall appear that a majority of all the citizens of this state, voting for representatives, have voted in favour of such proposed amendments, and two-thirds of each house of the next general assembly shall, after such an election, and before another, ratify the same amendments by yeas and nays, they shall be valid, to all intents and purposes, as parts of this constitution: *Provided*, that the said proposed amendments shall, at each of the said sessions, have been read three times, on three several days, in each house.

SCHEDULE.

Change of government not to affect contracts.

SEC. 1. That no inconvenience may arise from a change of territorial to a permanent state government, it is declared that all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if no such change had taken place: and all process which shall, before the third Monday in September next, be issued in the name of the Alabama territory, shall be as valid as if issued in the name of the state.

Fines, &c. accrue to the state.

SEC. 2. All fines, penalties, forfeitures, and escheats accruing to the Alabama territory, shall accrue to the use of the state.

Bonds and criminal actions, how prosecuted.

SEC. 3. The validity of all bonds and recognizances, executed to the governor of the Alabama territory, shall not be impaired by the change of government, but may be sued for and recovered in the name of the governor of the state of Alabama and his successors in office: and all criminal or penal actions arising or now depending within the limits of this state, shall be prosecuted to judgment and execution in the name of said state, all causes of action arising to individuals, and all suits at law or in equity, now depending in the several courts within the limits of this state, and not already barred by law, may be commenced in, or transferred to, such courts as may have jurisdiction thereof.

Territorial officers continued until superseded.

SEC. 4. All officers, civil or military, now holding commissions under the authority of the United States or of the Alabama territory, within this state, shall continue to hold and exercise their respective offices under the authority of this state, until they shall be superseded under the authority of this constitution, and shall receive from the treasury of this state the same compensation which they heretofore received, in proportion to the time they shall be so employed. The governor shall have power to fill vacancies by commissions, to expire so soon as elections or appointments can be made to such offices by authority of this constitution.

What laws continued.

SEC. 5. All laws and parts of laws, now in force in the Alabama territory, which are not repugnant to the provisions of this constitution, shall continue and remain in force as the laws of this state, until they expire by their own limitation, or shall be altered, or repealed, by the legislature thereof.

Qualification of voters.

SEC. 6. Every white male person above the age of twenty-one years, who shall be a citizen of the United States, and resident in this state at the time of the adoption of this constitution, shall be deemed a qualified elector at the first election to be holden in this state. And every white male person who shall reside within the limits of this state at the time of the adoption of this constitution, and shall be otherwise qualified, shall be entitled to hold any office or place of honour, trust, or profit, under this state; any thing in this constitution to the contrary notwithstanding.

Citizens.

President to issue writs of election.

SEC. 7. The president of this convention shall issue writs of election directed to the sheriffs of the several counties, requiring them to cause an election to be held for a governor, representative to the Congress of the United States, members of the general assembly, clerks of the several courts, and sheriffs of the respective counties, at the respective places of election in said counties, on the third Monday and the day following in September next, which elections shall be conducted in the manner prescribed by the existing election laws of the Alabama territory; and the said governor and members of the general assembly, then duly elected, shall continue to discharge the duties of their respective offices, for the time prescribed by this constitution, and until their successors shall be duly qualified.

Apportionment of representation.

SEC. 8. Until the first enumeration shall be made, as directed by this constitution, the county of Autauga shall be entitled to two representatives, the county of Baldwin to one representative; the county of Blount to three representatives; the county of Cahawha to one representative; the county of Clarke to two representatives; the county of Conecuh to two representatives; the county of Cotaco to two representatives; the county of Dallas to two representatives; the county of Franklin to two representatives; the county of Lauderdale to two representatives; the county of Lawrence to two representatives; the county of Limestone to three representatives; the county of Madison to eight representatives; the county of Marengo to one representative; the county of Marion to one representative; the county of Monroe to five representatives; the county of Montgomery to three representatives; the county of Mobile to one representative; the county of St. Clair to one representative; the county of Shelby to two representatives; the county of Tuskaloosa to three representatives; and the county of Washington to two representatives. And each county shall be entitled to one senator, who shall serve for one term.

Oaths of office, by whom administered.

SEC. 9. The oaths of office, herein directed to be taken, may be administered by any justice of the peace, until the general assembly shall otherwise direct.

ORDINANCE.

Convention accept the conditions of the act of congress admitting the state into the Union.

This convention, for and in behalf of the people inhabiting this state, do accept the propositions offered by the act of Congress, under which they are assembled; and this convention, for and in behalf of the people inhabiting this state, do ordain, agree, and declare, that they for ever disclaim all right and title to the waste or unappropriated lands lying within this state; and that the same shall be and remain at the sole and entire disposition of the United States, and, moreover, that each and every tract of land, sold by the United States after the first day of September next, shall be and remain exempt from any tax, laid by the order or under the authority of this state, whether for state, county, township, parish, or any other purpose whatsoever, for the term of five years from and after the respective days of sales thereof, and that the lands belonging to the citizens of the United States, residing out of the limits of this state, shall never be taxed higher than the lands belonging to persons residing therein, and that no tax shall be imposed on lands the property of the United States; and that all navigable waters within this state shall for ever remain public highways, free to the citizens of this state and of the United States, without any tax, duty, impost, or toll therefor, imposed by this state: and this ordinance is hereby declared irrevocable, without the consent of the United States.

Done in convention at Huntsville, this second day of August, in the year of our Lord one thousand eight hundred and nineteen, and of American Independence the forty-fourth.

J. W. WALKER,
President of the Convention.

Attest,
JOHN CAMPBELL, *Secretary.*

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